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ABSTRACT

The purpose of this book is to revitalize teaching and learning about the U.S. Constitution for elementary and secondary school students. Fifty-one classroom teachers participated in the Special Programs in Citizenship Education (SPICE II), a project that focused on the development of new lesson plans and activities on the Constitution. These lesson plans are reproduced in this book in units that explore: (1) constitutional issues in U.S. history; (2) contemporary constitutional/legal issues; (3) constitutional issues in school settings; and (4) approaches to teaching about the U.S. Constitution. A table cross-references the lessons by subject areas and grade levels. Each lesson plan includes: (1) an introduction; (2) the suggested audience; (3) time requirements; (4) goals; (5) materials needed; (6) procedures; (7) evaluation suggestions; (8) resource material suggestions; and (9) a bibliography. Some lesson plans include student handouts. (JHP)

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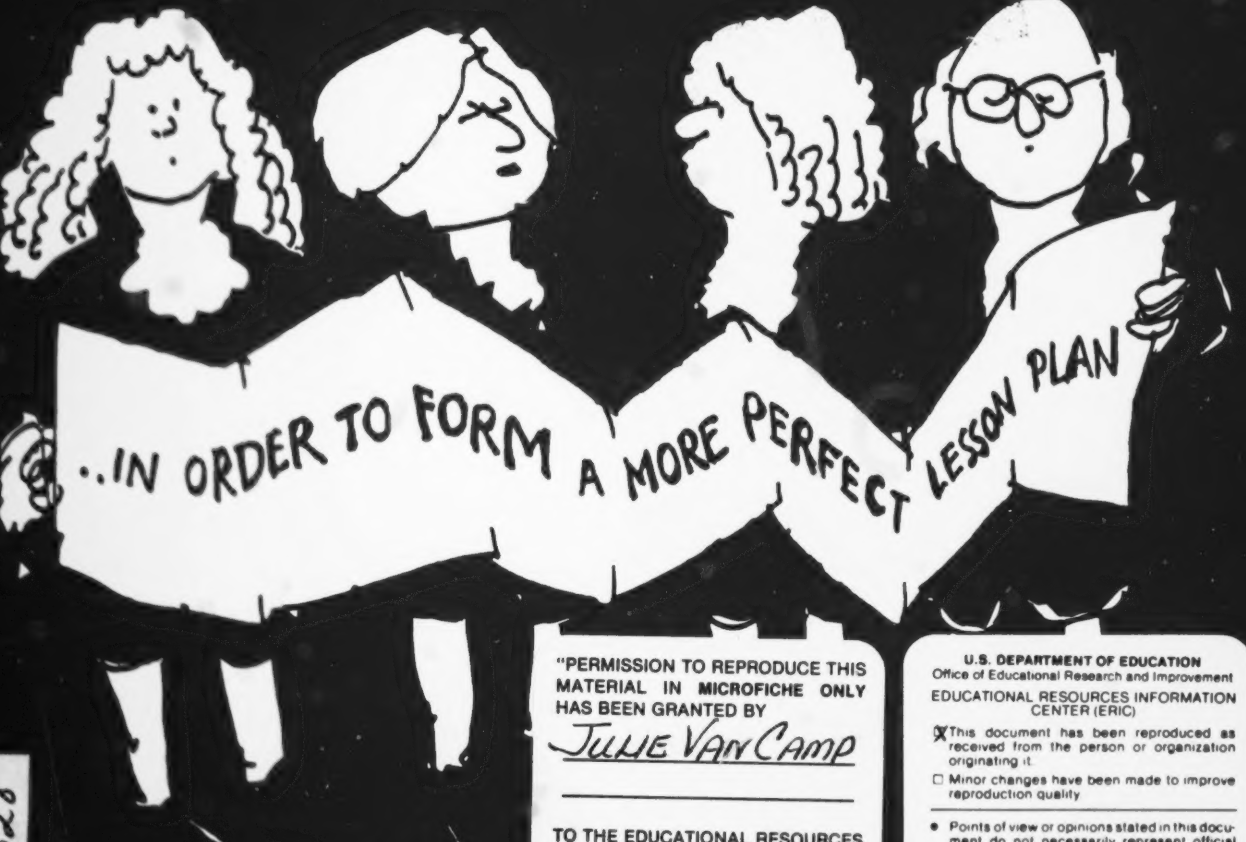
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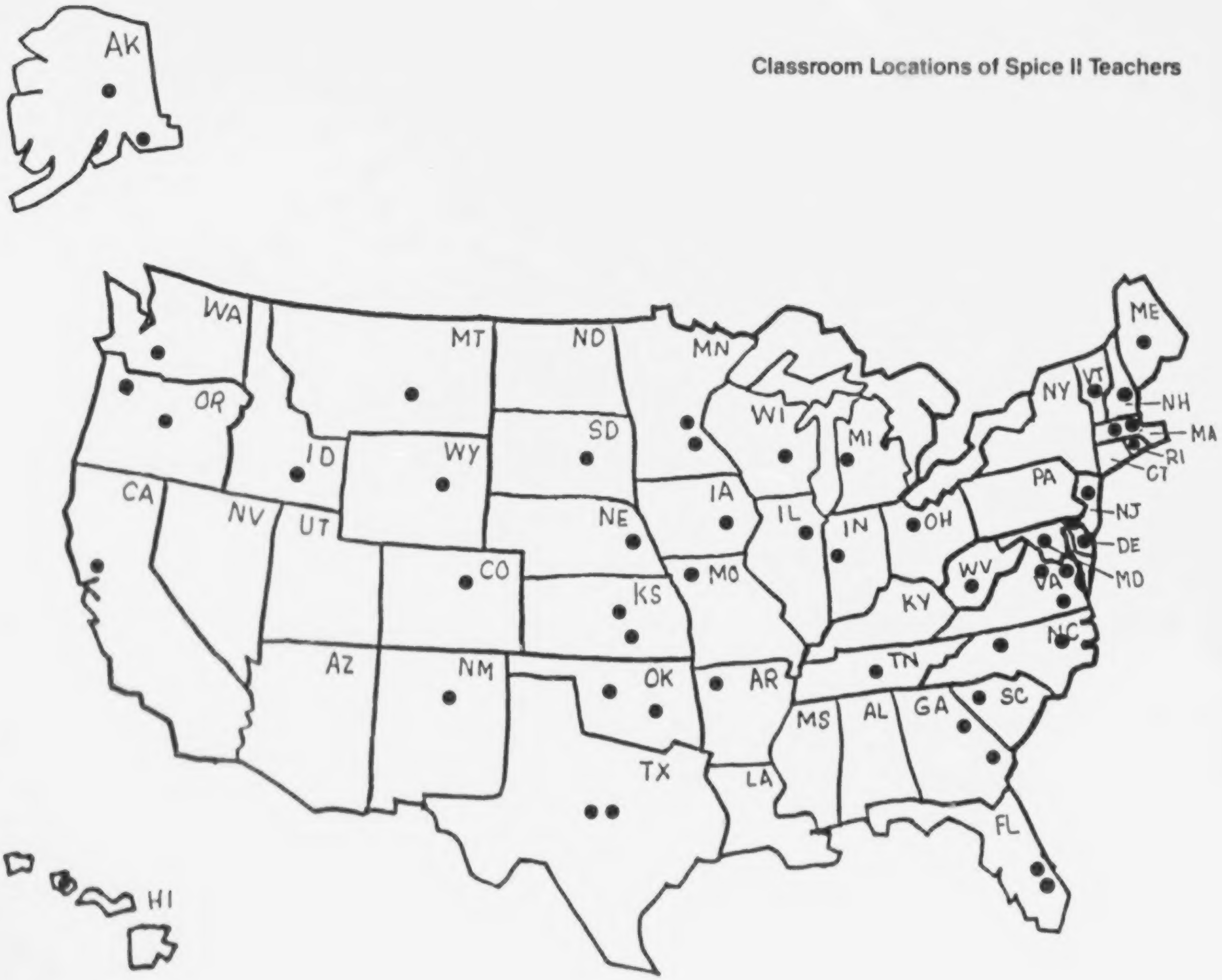
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CRADLE
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CONSTITUTIONAL SAMPLER

. . . In Order To Form a More Perfect Lesson Plan . . . .

Written By

SPICE II Classroom Teachers

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CRADLE

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The Bicentennial of the ratification of the U.S. Constitution has provided a unique opportunity to revitalize the teaching and learning about this historical document for elementary and secondary school students. Fifty-one classroom teachers from across the country were selected to participate in SPICE II (Special Programs in Citizenship education), a project which focused on the development, demonstration, dissemination and institutionalization of new lesson plans and activities on the Constitution.

A Constitutional Sampler In Order to Form A More Perfect Lesson Plan is the result of the commitment and dedication of these individual teachers who (1) attended the SPICE II Innovation Institute, (2) developed new Constitution lesson plans and demonstrated them in their classrooms, (3) attended a follow-up Institutionalization Training Seminar to share and learn about each other's lesson plans and about dissemination strategies, and (4) conducted in-service training for other teachers in the use of the lesson plans contained in this book. These four components of the teacher's program were made possible by the combined efforts and cooperation of many organizations, agencies, and individuals. The focus of these lesson plans is the historic development and contemporary application of the Constitution.

CRADLE wishes to thank each individual teacher for the tremendous volunteer efforts expended during this year-long program and each state and local leader who nominated them for SPICE II. These individual SPICE II teachers are reaching thousands of elementary school students with innovative lesson plans on the Constitution.

Many other individuals have contributed to this process, including program faculty, mentors, project staff and funders. State educational agencies, state and local law-related education projects, state Bicentennial Commissions, the CloseUp Foundation and SPICE I teachers from 50 states and the District of Columbia nominated these classroom teachers and assisted them with their follow up activities. SPICE II was made possible by a grant from the U.S. Department of Education under the Law-Related Education program and by support from Wake Forest Univeristy, Wake Forest School of Law, the RJR/Nabisco Legal Department, Piedmont Airlines and 50 local educational agencies. Many individual volunteers served on the Institute faculty and as mentors to the teachers. CRADLE extends special thanks to the following Wake Forest School of Law faculty members: Professors Rhoda Billings, David Logan, Deborah Parker, J. Wilson Parker, Charles Rose, Thomas Steele, George Walker, and Kenneth Zick. Other Wake Forest University faculty members serving on the Institute faculty and working with SPICE II teachers include Professors David Hills, Katy Harriger, John Litcher, and Robert Utley, Jr., along with University Library staff, Government Documents Specialist John Dombrowski and Reserve Books Section Head, Kendall Reid, who organized research resources for the teachers. These individuals volunteered to work with the SPICE II Institute during their spring vacation. We commend them for their commitment and dedication. Peggy Brookshire provided continuity for the four components and all the individuals interacting with the SPICE II teachers in her role as Administrative Assistant.

Our SPICE II teachers experienced true southern hospitality offered by Winston-Salem/Forsyth County social studies teachers. Coordinating these local efforts, which included personally greeting arriving teachers at the Greensboro Regional Airport, were Superintendent of Schools Zane Eargle, Social Studies Coordinator Harriet Parrish and Middle School teacher Marie McBride. CRADLE is indebted to the local school system for the continued volunteer support and cooperation which it provides.

A special acknowledgement is extended to additional scholars who shared their expertise and personal experiences with the Institute participants. Their presentations helped inspire SPICE II teachers to develop innovative lesson plans. These individuals include: Institute keynote speaker and lecturer, Professor A.E. Dick Howard, University of Virginia School of Law; Mrs. Rosa Parks, the mother of the Civil Rights Movement; Mrs. Mariagnes Uenishi Medrud, a former Japanese Internment detainee; Father Robert Drinan of Georgetown University School of Law; Attorney Penfield Tate III; and author, poet, lecturer Emily Herring Wilson. CRADLE is founded on the principle that it is essential to promote in-kind volunteer service. These individuals exemplify this principle. CRADLE is indebted to them for sharing their knowledge, perspectives and experiences.

As with prior CRADLE programs, the Center for Creative Leadership, through its Creativity Development Division, provided the unique component which enhances the individual teacher's ability to develop innovative lessons. Dr. Stanley Gryskiewicz, along with cartoonist David Hills, presented an introduction to creative problem solving which helped teachers approach their tasks with new perspectives. We again wish to thank the Center for Creative Leadership for its continued support of CRADLE endeavors.

"The health of a democratic society may be measured by the quality of functions performed by private citizens" (Alexis de Tocqueville). The private citizens involved in SPICE II certainly reinforce the good health of teaching about democratic principles among the nation's elementary and secondary level students. These individuals—teachers, lecturers, funders and support staff—are all to be commended for making the C in CRADLE take on many meanings—Commitment, Catalyst, Companionship, Cooperation—for these C's and many more, CRADLE salutes all the individuals who came together to help creative teachers develop and disseminate lessons on the Constitution.

Julie Van Camp
Executive Director

ODE to SPICE II

SPICE II began for me in the Dallas airport
    Where, by accident, I met my roommate –
    Both of us anxious to begin what we believed
    To be an exciting week.

As a quiet observer, enthusiastic observer,
    I participated in my own way. . . .
    "Sponging up" everything I heard:
      Ideas,
      History,
      Exciting dialogue,

    The excitement began early and continued,

An elementary teacher, a college instructor
    Learned from the speakers –
    A real "high" for me.

A song of freedom–The Constitution –
    I heard loud and clear
    Reflections of the past –
    Our key to the future.

In my simple way, a thank you
    Voiced in sincerity to each of you this week
    Who planned excellent experiences
    To be echoed on the Kansas plains:
      To children, and
      To colleagues.

Barbara Firestone
McCollom Elementary School
Wichita, Kansas

Table of Contents

A SAMPLE OF LESSONS ON THE CONSTITUTION

Constitutional Issues in United States *History*

Carole Bigelow	A Comparison of Primary Sources	1
Patrick Collins	Affirmative Action: Take It or Leave It	7
G. Sam Davis	Wisconsin Nullifies the Fugitive Slave Law	9
Nin Lee	The Constitution: Reliving 200 Years	13
Francis O'Malley	Woodrow Wilson's Stroke: Should Disability Have Been Declared?	19
John Pickering	Justice and the Constitution	27
Dale Robbins	Japanese-American Internment: American Concentration Camp or Reasonable Response to National Security	31
Geoffrey Scheurman	A Meeting of the Minds: In Search of the Common Law	37
Linda Smith	Who Really Wrote the Constitution?	43
Rob Stark	Ratification of the Federal Constitution in Massachusetts	47
Hal Stearns	The Japanese-American and World War II: A Case Study in Constitutional Abuse	53
Barbara Sullivan	Exploring Constitutional Issues Using Primary and Secondary Sources	61
Gayle Thieman	A Woman's Place is in the House...and the Senate	65
Joan Thompson	Establishing Justice	73
Marie Truppa	Fourteenth Amendment—Equal Protection Clause	79
Sandra Weatherwax	Contrasting "New" Pacific Area Constitutions	83
Williams Wells	The Northwest Ordinance: A Pattern for Statehood and Equality	97
Peggy Wilhite	System of Checks and Balances	105
Mary Louise Williams	The Body and Soul of the Law	111

Contemporary Constitutional/Legal Issues

Sarah Jane Berger	Roe v. Wade: A Case Study in Individual Freedoms	123
Connie Hankins	Drug Testing: Is it Constitutional? A Fourth Amendment Search and Seizure Question	127
Kenneth Link	So Arduous a Duty—Judicial Decision-Making and the Will of the People	135
Albert Lindquist	A Criminal Justice Creative Writing Assignment	139
David Morris Jake Sullivan	Search and Seizure and the Exclusionary Rule	145
Greg Tafel	In Re Gault: An Introduction to the Juvenile Justice System, Including Processes, Rights and Limitations	151
Jack Tanner	The Legal Process: Understanding the Issues	155

Constitutional Issues in the *School* Setting

Kathy Aldridge Jeanne Wray	Students' Constitutional Rights	159
Pat Curran Gary Strauch	Introduction to the Bill of Rights	165
Deborah English	Freedom of Religion	169
Rodney Hanson	Don't Touch My Hair! Freedom of Expression at School	175
Mary Oppegard	From Tinker to Fraser: Freedom of Speech in Public Schools	181
Kathryn Orler	Freedom of Speech, A First Amendment Right	191

Approaches to Teaching About the Constitution

Dorothy Allen	We the People	195
Bob Blake	Studying the U.S. Constitution	199
Mickey Bogart	We the People—A Collaborative Writing Project on the Constitution	201

Karen Diercks	Pick: Patents, Inventions, the Constitution and Kids	217
Barbara Firestone	The U.S. Constitution is Only as Good as "We the People" Make It	221
Kathy Griffin	A Constitutional Scavenger Hunt	227
Angela Hamilton	A Constitutional Party	233
Marjorie Hollowell	Insure Whose Domestic Tranquility?	237
Gary Mast	Straws and Pins	241
Albert Melini	The Bill of Rights in 2010	245
Laurie Mitchell	The Penning of a Class Constitution	247
Michael Morris	Elementary Mock Trial	251
Mary-Ellen O'Brien	Unfolding Complex Constitutional Issues Via Student Composed Plays	257
Sally Jean Ricciotti	Our Constitution in the Eyes of the Beholder	259
James Smith	Crisis Decision-Making Skills—A Simulation	263
Karen Tryda	The People the Constitution Forgot	265

Table of Lesson Plans

Theme/Issue	Grade Level	Listing in Table of Contents	Author
Founders	EI	Approaches	Allen
Freedom of Speech Fourth Amendment	EI	Schools	Aldridge/Wray
Fourth Amendment	H	Contemporary	Berger
Founders/Liberty	EI	History	Bigelow
Separation of Powers	H	Approaches	Blake
Governance	H	Approaches	Bogart
Affirmative Action	H	History	Collins
Bill of Rights	H	Schools	Curran/Strauch
Nullification/ Fugitive Slave Law	H	History	Davis
Patents	E	Approaches	Diercks
Freedom of Religion	H	Schools	English
Constitutional Flexibility	E	Approaches	Firestone
Constitutional Scavenger Hunt	IH	Approaches	Griffin
Founders	EIH	Approaches	Hamilton
Fourth Amendment	IH	Contemporary	Hankins
Freedom of Speech	H	Schools	Hanson
Equal Protection	IH	Approaches	Hollowell
Legislative Process	EIH	History	Lee
Judiciary	I	Contemporary	Link
Criminal Justice	H	Contemporary	Lindquist
Governance	IH	Approaches	Mast
Bill of Rights	I	Approaches	Melini
Rule Making	EI	Approaches	Mitchell
Judicial Procedures	EI	Approaches	M. Morris
Fourth Amendment	H	Contemporary	D. Morris/ J. Sullivan
Writing Plays	EIH	Approaches	O'Brien
Twenty-fifth Amendment	H	History	O'Malley
Freedom of Speech	H	Schools	Oppegard

Theme/Issue	Grade Level	Listing in Table of Contents	Author
Freedom of Speech	E	Schools	Orler
Justice	EI	History	Pickering
Peer Teaching	EI	Approaches	Ricciotti
Equal Protection	H	History	Robbins
Governance	H	History	Scheurman
Governance	IH	Approaches	J. Smith
Political Philosophy	H	History	L. Smith
Ratification	EIH	History	Stark
Equal Protection Due Process	H	History	Stearns
Equal Protection Judicial Review	H	History	B. Sullivan
Equal Protection Juveniles	H	Contemporary	Tafel
Legislative Process	H	Contemporary	Tanner
Equal Protection Women	H	History	Thieman
Civil, Criminal Rights	H	History	Thompson
Equal Protection	H	History	Truppa
Rule Making	EI	Approaches	Tryda
International	H	History	Weatherwax
Northwest Ordinance	H	History	Wells
Judicial Procedures	EI	History	Wilhite
Equal Protection	H	History	Williams

LIST OF CASES REFERRED TO IN THE LESSON PLANS

Abington v. Schempp, 374 U.S. 203 (196).
Aguilar v. Texas, 378 U.S. 108 (1964).
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Breen v. Kahl, Mem., 419 F.2nd 1034 (1969).
Brinegar v. United States, 338 U.S. 160 (1949).
Brown v. Board of Education of Topeka, 349 U.S. 294, (1955).
California v. Carney, mem. 441 U.S. 963, (1985).
Chimel v. California, 395 U.S. 752 (1969).
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Coolidge v. New Hampshire, 91 S. Ct. 2022 (1970).
Dawson v. Hillsborough County, Florida School Board, 445 F.2d 308 (1971).
Dred Scott v. Sandford, 19 How. 393, 15 L.Ed 691 (1857).
Engle v. Vitale, 370 U.S. 421 (1962).
Gideon v. Wainwright, 372 U.S. 335 (1963).
Fairfax Co. School Board v. Gambino, 564 F.2d 157 (1977).
Ferrell v. Dallas Ind. School Dist., 89 S. Ct. 98, (1968).
Firefighters Local Union 1784 v. Stotts, 467 U.S. 561, 104 S. Ct. 2576 (1984).
In re Gault, 87 S. Ct. 1428, (1967).
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Regents of University of California v. Bakke, 438 U.S. 265 (1978).
Slaughter House Cases, 16 Wall – 36 (1873).
The Civil Rights Cases (1883) 109 U.S. 3, 3 S. Ct. 18, 27 L.Ed 835.
United States v. Choate, 527 F.2nd 748, 96 S. Ct. 2167 (1975).
United States v. Cruikshank, 92 U.S. 542 (1876).
United States v. Karo, 104 S. Ct. 3296 (1983).
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Yates v. United States, 77 S. Ct. 1064 (1957).

FOREWORD

This publication has been written by teachers for teachers. It is published by the Center for Research and Development in Law-Related Education (CRADLE). The mission of CRADLE is to encourage the development and dissemination of innovative instructional materials which focus on the law, the legal process, and the fundamental principles on which the legal system is based. To this end, CRADLE annually sponsors the Special Programs In Citizenship Education (SPICE). This week-long institute involves teachers from throughout the nation. At the conclusion, participants develop and field test instructional materials which are then published and disseminated by CRADLE. This publication, therefore, represents the efforts of elementary and secondary educators from thirty-eight states and the District of Columbia. More importantly, it represents a labor of love by dedicated teachers whose expertise might be overshadowed only by their personal desire to share the success of this experience with other educators.

WHAT IS CRADLE?

The Center for Research and Development in Law-Related Education, a non-profit organization, was established in 1983 to encourage and support educators who wish to develop innovative and creative instructional approaches in civic and law-related education. CRADLE is based in Winston-Salem, North Carolina, at Wake Forest University School of Law; the CRADLE spirit, however, is located nationally in the hearts and minds of educators who have participated in CRADLE programs. CRADLE is governed by a geographically diverse Board of Trustees whose professional expertise ranges from law and law-related education to business and finance. Board members dedicate their "spare" time and know-how to formulate policy and to plan and implement programs.

CRADLE programs by design seek to focus on the individual most directly involved with instruction, the classroom teacher. The goal of the project is to draw upon the expertise of classroom teachers and to nurture and support them in undertaking new and daring experiences. To achieve this goal CRADLE has developed a plan with three major components: 1) a teacher training institute combining creativity training with civic and law-related education content and methods; 2) an ongoing mentor program to support institute participants in research, development, and dissemination of instructional materials; and 3) a publication designed to promote the efforts of institute participants, teachers.

WHAT IS SPICE?

The three components of the CRADLE plan together constitute the program called SPICE, Special Programs in Citizenship Education. SPICE II, the second in this series of programs, was a one-week institute and a follow-up conference conducted in the spring and fall of 1987 for 51 teachers from across the country. The week-long institute was held at Wake Forest University School of Law, and the three-day follow-up conference was conducted at Hamline University School of Law in St. Paul, Minnesota.

The institute addressed a wide variety of law-related topics and instructional methodologies which were correlated with practical experiences to help participants foster creative processes and growth. Institute faculty included historians, law professors, attorneys, creativity experts, personal experience speakers (a World War II Japanese Relocation Camp internee and a leader of the civil rights movement), an artist in residence, and CRADLE board members.

Institute participants were matched with CRADLE board members, who served as mentors as the participants developed instructional materials. During the following months, mentors maintained communication with the SPICE participants to offer encouragement and consultation in the research and development of projects. Some participants requested and received an on-site visitation from their mentor; others simply corresponded or talked by phone. The sessions during the three-day follow-up conference in St. Paul were devoted to sharing and critique of the labor of the previous months. Participants also designed local workshops for dissemination of the publication you are now reading.

Once satisfied with the final product, each participant submitted a lesson for inclusion herein. It was the responsibility of the participants to seek review of their work by a content expert and to field test the material in their own classroom. Participants were also encouraged to have one other teacher instruct the material before submitting for publication.

In order to preserve the philosophy and spirit of CRADLE, the editors have tried not to tamper significantly with a participant's manuscript. Some adjustments have been made, however, for consistency in format, and portions of some lessons may have been deleted to conform to the constraints of space. Otherwise, the lessons stand as submitted by the participants and may, thereby, explain the variety of writing and teaching styles to be experienced by the reader.

WHO WERE THE SPICE II PARTICIPANTS?

Nominations for SPICE II participants were solicited nationally from state departments of education, law-related education projects, and social studies specialists. All applicants, therefore, were nominated by individuals knowledgeable in the field and, to some degree, professionally associated with the nominees.

There were many more applicants than could be accepted. In selecting the SPICE participants, CRADLE strived to achieve as much diversity of teaching levels and experiences as possible. The ideal was to have at least one teacher from each state. In fact, 38 states were represented and the District of Columbia. Some participants came from as far away as Alaska and Hawaii and as nearby as Winston-Salem.

The SPICE II participants represented varying lengths of experience in the teaching profession and in instructional experience in the field of law-related education. The length of their classroom experience ranged from three to 27 years. They represented grade levels from upper elementary through high school. They represented urban, suburban, and rural schools.

HOW TO USE THIS PUBLICATION

This publication is organized by content according to the constitutional issues to be taught. The Table of Lessons designates the theme or major concepts contained in each lesson and the instructional level intended by the author. Much of the material in this book is easily adaptable to a variety of grade levels; therefore, elementary lessons may be entirely appropriate for middle school instruction, and vice versa.

The lessons are organized in an easy-to-follow format beginning with an overview of the content, including a rationale for integrating it into the curriculum. Each lesson designates an instructional level and recommended length of instructional time. Student "handouts" and other instructional materials are identified along with step-by-step instructional procedures. A special section, Tips from the Teacher, offers suggestions based on the author's experience using the material in the classroom.

Users of the materials in this publication are encouraged to communicate their recommendations to CRADLE. A brief evaluation detailing successes, problem areas, and suggestions and insights would be most valuable for CRADLE and future SPICE participants.

Kenneth G. Rodriguez
General Editor

A Comparison of Documents Fundamental to Our Nation's Birth

Carole Bigelow

Harlan School
Wilmington, Delaware

INTRODUCTION

When studying American History, students learn much about such heroes as George Washington, Thomas Jefferson, and James Madison. This lesson is designed to illustrate that there were others, such as George Mason, who had a profound influence on the founding of this nation, and, further, that they deserve a more prominent place in history and in our memories. By comparing Mason's Virginia Declaration of Rights, the Declaration of Independence, the Constitution, and the Bill of Rights, students should come to the conclusion that those latter three documents drew heavily from Mason's Virginia Declaration of Rights. In studying the great documents of history, it is important to observe how documents derive philosophy and ideas from preceding documents.

It might be argued that lesser known delegates to the Constitutional Convention of 1787, like George Mason, were equally important in contributing to the greatness of this country. The primary purpose of this lesson is to demonstrate that George Mason is an unsung hero who deserves our attention and our study.

George Mason was acknowledged by Thomas Jefferson as a man "...of the first order of greatness." It would seem that the Antifederalist stand Mason took against the Constitution is remembered above the many other fine contributions he made to our emerging nation. George Mason has, therefore, not been accorded the eminence in history he deserves. The study of his objections to the Constitution should generate respect for his position and an understanding that his insistence upon legal guarantees of personal freedom in the Constitution ultimately resulted in the Bill of Rights.

It is hoped that this study will stimulate students to investigate and discover that the ideas in the Virginia Declaration of Rights are evidenced in other state constitutions and bill of rights, as well as in the constitutions of other countries, the French Declaration of the Rights of Man, and the United Nations Declaration of Human Rights.

AUDIENCE

This lesson is appropriate for academically gifted fifth grade students. It may also be used with students in grades six through twelve.

TIME TO COMPLETE

Approximately twelve hours of class time.

GOALS

As a result of this lesson, students will:

- discover how the Virginia Declaration of Rights of 1778 parallels the Declaration of Independence, the Constitution, and the Bill of Rights
- understand that George Mason exerted a profound influence over those three latter documents
- strengthen their research, critical thinking, and problem solving skills
- develop an understanding of the values of our founding fathers and of the way those values affect our lives today.

MATERIALS

1. Copies of the Virginia Declaration of Rights, the Declaration of Independence, the United States Constitution, and the Bill of Rights should be available to each student. These may be found in numerous books on the Constitution.
2. A large bulletin board or display area of approximately four feet by ten feet.
3. Assorted books, as suggested in the bibliography, about George Mason, the Constitution, the Declaration of Independence, and the Bill of Rights.
4. Enlarged copies of the Virginia Declaration of Rights, the Declaration of Independence, the United States Constitution, and the Bill of Rights for use on the bulletin board/display area.
5. Wide assortment of colored marking pens and matching yarn. Bulletin board stick pins.

PROCEDURE, Part One

1. Give students background information on George Mason (see attached biographical sketch). Have students read the Virginia Declaration of Rights, the Declaration of Independence, the Constitution, and the Bill of Rights, with assistance from the teacher for clarification of terms and phrases.
2. Divide the class into small groups of three to five students, with at least one of the most academically talented students assigned per group. Have each group notate the phrases and ideas in the Virginia Declaration of Rights that can be found in the Declaration of Independence; then notate where similar phrases and ideas are found in the Constitution; and then in the Bill of Rights. An example master for a transparency is included to help illustrate to students what they are trying to accomplish.
3. Have students construct a large bulletin board display of the four enlarged documents. Circle with a colored marking pen (red, for example) a passage in the Virginia Declaration of Rights which is also found in the other documents, and circle those passages in the same color. Continue circling parallel passages with appropriate parallel colors.
4. Have students connect with matching colored yarn, using stick pins to anchor the yarn, the parallel passages in the four documents.

PROCEDURE, Part Two

1. Have students read George Mason's objections to the Constitution, with assistance from the teacher. These may be found in *The Antifederalists*, mentioned in the bibliography, or in other books on the Antifederalists' arguments.
2. In small groups, again, have the students discuss those objections which ultimately were resolved by amendments to the constitution. For example, the addition of the first ten amendments to the Constitution satisfied one of several demands by George Mason and other Antifederalists. Mason and others criticized the Constitution because it allowed the slave trade to continue for another twenty years until 1808 and failed to give slaves equal rights the same as Americans. Students will discover that the Thirteenth, Fourteenth, and Fifteenth Amendments finally spoke to these objections.
3. Spokespersons from each group might talk to the class about those objections they feel were resolved in the years after 1787. They might include in their speeches those predictions Mason made that became reality and those that did not. For example, it could be pointed out that Mason objected that the executive was too powerful. He suggested that the presidency should be shared by three people. Students may well have a lively discussion on that topic in light of "Watergate" and the "Iran-Contra" affair.

EVALUATION

The successful completion of the bulletin board as well as accurate, well-presented speeches might serve as the evaluation instruments of student achievement during this lesson. Further, lively discussions by students, with the teacher's occasional interjections of cogent points when needed, will ensure that learning appropriate to the students has taken place.

TIPS FROM THE TEACHER

An excellent source of elementary level lessons on the development and explanation of the Constitution and Bill of Rights can be found on pages 129-155 of the *Elementary Law-Related Education Resource Guide, Grades 3-6*. This guide may be purchased by writing:

Beverly S. Clark, Director
Center for Elementary Law-Related Education
Emile de Sauze School—Room 216
4747 E. 17th Street
Cleveland, Ohio 44128

For the student who has the ability and interest to pursue the "roots" of America's early documents, the teacher may direct him/her to read the Magna Carta, the 1688 English Declaration of Rights, and early charters for the colonies. Many of the ideas for these documents arise from the philosophies of John Locke. Kathleen Squadrito explains Locke's theories in clear, present-day terms in her book, *John Locke*. To heighten understanding, *Unlocking the Constitution and the Declaration of Independence, CQ's Guide to the U.S. Constitution*, and *A Detailed Analysis of the Constitution*, as mentioned in the bibliography, are useful tools for students and teacher alike.

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A series of biographical sketches of each of the signers of the Declaration of Independence, preceded by a brief historical background for the Declaration.

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A student book which attractively presents, in red, white, and blue format, sections of the Constitution in the original text and, alongside them, a simplified version of each section. Meant for the reluctant junior and senior high student, but enjoyable to elementary students. Cartoons, drawings, photographs, glossaries, and a variety of learning activities.

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A brief article pointing out how the principles of the Constitution evolved in the colonial period of American history.

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A collection of writings by Antifederalists arguing their objections to the Constitution. Included among many are George Mason's "Objections to the Proposed Federal Constitution," Richard Henry Lee's "Letters from the Federal Farmer," and George Clinton's "The Letters of 'Cato'."

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Excerpts from documents such as the Declaration of Independence and state constitutions illustrate cogently how America's values and traditions evolved.

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A concise biography of the man and a history of the area and times in which he lived.

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Concise history of the writing of the Constitution. Clearly explains why the delegates included what they did in the Constitution. Some of the history surrounding each article, along with debate about it. A copy of the Constitution itself, an index for it, and a glossary of terms.

Patrick, John J. and Richard C. Remy for Project '87. *Lessons on the Constitution: Supplements to High School Courses in American History, Government and Civics.* Social Science Education Consortium, Inc., and Project '87, 1986.

A fine collection of lesson plans with accompanying teacher information. Sixty-four lessons covering the topics: Documents of Freedom, Origins and Purposes of the Constitution, Principles of Government in the Constitution, Amending and Interpreting the Constitution, and Landmark Cases of the Supreme Court. Information and adaptable lessons valuable to elementary as well as secondary teachers.

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Brief biographical sketches of many of the men who guided America through the years in which she emerged as an independent, stable country.

HANDOUT 1

GEORGE MASON—A BIOGRAPHY

By the time George Mason was born in 1725, the Mason family had established itself as one of wealthy and talented leaders in the elite Northern Neck of Virginia. That flat finger of land, flanked by the Potomac and Rappahannock Rivers, was home to the Carters, the Lees, the Washingtons, and the Masons. The members of those families were the social leaders, the arbiters of justice in the courts, representatives to the House of Burgesses, church vestrymen, and the owners of expansive and prosperous plantations in Colonial Virginia. George Mason married in 1750, and by 1758 had completed Gunston Hall, the estate in which he would live out his life, and in which he would raise nine children.

Mason was plagued throughout most of his adult life with gout and gastro-intestinal ailments which impaired his physical activity and humor, but never his keen, agile mind. Despite these maladies that made travel and public service away from home painful episodes, Mason served Virginia and the growing young nation throughout his life, and was proclaimed by Thomas Jefferson as "The wisest man of his generation."

Before he was thirty, Mason was justice of the peace of Fairfax County. Justices heard all civil and criminal cases, made county laws, levied taxes, decided on county improvements, gave and revoked licenses, and, in general, touched every man's life in a variety of ways. Justices were very powerful and important local leaders.

One of Mason's earliest appearances on the national scene was in protest to the Stamp Act of 1765. He wrote an open letter in 1766, which appeared in a British newspaper, warning Britain of the evils that were growing out of her efforts to monopolize American trade, and declaring that Americans would not tolerate oppression of their liberties, and that a revolt would occur if freedoms were denied.

In May of 1776, Mason, as a member of the House of Burgesses, arrived in Williamsburg shortly after Virginia had declared its independence from Britain. He found that a resolution had been passed calling for a declaration of rights and a plan for government. Mason was given the task of drafting the proposals for the new government because of his highly acclaimed knowledge of the law and colonial charters.

On June 12, 1776, George Mason's Virginia Declaration of Rights was adopted by the Virginia Convention. This document was one of the most powerful expressions of the rights of man ever written. It served as a model for the Declaration of Independence, many other state declarations of rights and, in 1791, the Bill of Rights. The Virginia Declaration of Rights was a statement of the relationships that should exist between people and their government, but a constitution was needed to give authority to that statement. By June 29, 1776, the Virginia Constitution, largely the work of George Mason, was adopted. Virginia, and, thus, Mason, led, and other states soon followed with constitutions which closely paralleled the documents of Virginia.

Mason attended the Constitutional Convention in Philadelphia in the summer of 1787. At that convention he was noted as speaking on nearly every important question that was debated. It seemed he lost on many of the major issues, while he won on some of the minor ones. Because the House of Representatives had a larger representation of the large states, he wanted that house to initiate any laws involving money. He won that point. Yet, he lost the point which allowed the slave trade to continue for another twenty years.

Mason's most severe opposition to the Constitution came in the last few days of the Convention. There was no Bill of Rights guaranteeing individual liberties such as trial by jury. Other delegates pointed out that the Constitution did not negate the state declaration of rights, so such additions to the Constitution were not necessary. Mason feared that since the Constitution was the supreme law of the land, state declaration of rights would be overridden, as would state governments. Mason saw the Constitution as taking too much away from Virginia, and giving her too little. His objections to the Constitution were circulated even before he left Philadelphia.

In addition, Mason objected to what he considered a weak House of Representatives. He feared the short term would mean that poorly informed legislators would make laws. The office of Vice-President was seen as unnecessary by Mason, and he further deplored making that officer the president of the Senate, which blended the executive and legislative powers.

Many of Mason's objections centered around the concern that a given branch of the government had too much power and would be prone to corruption. He saw the power of the judiciary as overpowering state courts; he saw the Congress with authorities so great as to destroy the powers of the State legislatures or the rights of the people. Mason predicted that the government would begin as a moderate aristocracy, and disintegrate into either ". . . a monarchy or a corrupt, tyrannical aristocracy."

When time came for ratification of the Constitution by the states, Mason was established as a staunch Antifederalist opposing ratification along with fellow Virginians Patrick Henry and Richard Henry Lee. In the Virginia Convention, Henry and Mason argued heatedly, but unsuccessfully, for a bill of rights and other alterations to the Constitution before ratification.

Shortly after the Republic become a reality, Mason was heartened when James Madison, a fellow Virginian and strong advocate of the Constitution, fulfilled his promise to add a bill of rights. Madison's version was modeled after George Mason's 1776 Virginia Declaration of Rights. Mason also lived to see some southern politicians acknowledge the validity of his fears that the Northern business interests would profit at the expense of southern farmers, and that the states would give up more than they would get in return for the new Constitution.

George Mason died quietly October 7, 1792. The intellectual leader of the revolution who embodied his ideas in the Virginia Declaration of Rights was called a man "of the first order of greatness" by Thomas Jefferson. He was highly regarded and acclaimed by his peers, yet because of his stand against the unamended Constitution, he lost his place in history as a memorable hero of the Republic. Mason's objections to the Constitution were based upon the belief that a man's liberty was more necessary to protect than his property. Perhaps it is time to restore him to his proper place as one of America's greatest citizens.

*Note: Information for this brief biography was gathered primarily from *George Mason, Reluctant Statesman* by Robert A. Rutland, and from Mason's *Objections to This Constitution of Government.*

22

"Affirmative Action: Take It or Leave It?"

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INTRODUCTION

One citizen's affirmative action advantage is another's reverse discrimination handicap. Most young adults will confront this dilemma sooner or later. This lesson makes the students face the issue now. After reviewing the appropriate history, the students will find themselves in a situation whereby their value judgment of Affirmative Action will be determined. The initial purpose of the lesson is to review the laws of the land concerning blacks in America and to have all students acknowledge the systematic segregation of these, as well as other, Americans. The primary purpose of the lesson is then to create a scenario that requires students to confront Affirmative Action/ Reverse Discrimination and formulate their value judgment of it.

AUDIENCE

This lesson is designed for high school students as they are studying the course of U.S. Government. The targeted audience would be those who are legally classified as "minorities" eligible for affirmative action consideration and their "non-minority" classmates who are likely to claim to be victims of reverse discrimination. If you have a homogeneous class or wish to use role reversal, set up this lesson as a role play.

TIME TO COMPLETE

Three days; however, teachers can condense or expand the lesson given their respective time constraints.

GOALS

The first goal is to have the historical body of knowledge presented, which includes:

— the importation of slaves to America in the early 1600's
— the silence in the Declaration of Independence about the slave trade
— the euphemistic references to slaves in the Constitution
— the Missouri Compromise of 1820
— *Dred Scott v. Sandford* (1857)
— the essential cause of the Civil War
— the 14th Amendment's Equal Protection clause
— *The Civil Rights Cases* (1883)
— *Plessy v. Ferguson* (1896)
— *Brown v. Board of Education of Topeka* (1954)
— The Civil Rights Act of 1964, Titles VI and VII
— Affirmative Action
— *Regents of the U. of California v. Bakke* (1978) In the first major test of affirmative action, quotas were rejected but the use of race as one of several factors of admission was permitted.
— *United Steel Workers of America v. Weber* (1979) In keeping with the "spirit" of the Civil Rights Act of 1964, employers may voluntarily give minority workers special treatment in training programs.
— *Firefighters Local Union 1784 v. Stotts* (1984) and *Wygant v. Jackson Board of Education* (1986) Unlike admissions or promotions cases, these two suits dealt with layoffs during labor cutbacks. In both decisions the Supreme Court struck down affirmative action plans that protected black workers who had less seniority than white workers.
— *United States v. Paradise* (1987) A judge may order the Alabama state police to temporarily use quotas when there is a history of egregious racial discrimination.
— *Johnson v. Transportation of Santa Clara County* (1987) Women are eligible for affirmative action consideration to correct a conspicuous imbalance in jobs traditionally segregated by sex.

The second goal is to have students develop their opinion of affirmative action. To accomplish this they must both defend their view and identify the arguments of the opposition.

MATERIALS

Suggested and optional films and cases are listed under Goals and Procedures.

PROCEDURES

The lesson begins with a one-day review of the historical background of discrimination from the importation of slaves to the first Affirmative Action/Reverse Discrimination case. The lecture method may be the most expeditious procedure. As high school students today were born after the assassination of Martin Luther King, Jr., it is as important to generate sensitivity about the depth of discrimination as it is to review the history. If the class is already competent in this area, the film *King: Montgomery to Memphis* can be a compelling supplement to enhance their understanding.

The point of the second day is to have students take and defend a position on affirmative action/reverse discrimination. Select a familiar business in your area or a local government agency and announce to the class that it is initiating an affirmative action promotion plan. Divide the students into two groups to role play a) white males, and b) blacks, Hispanics and women. In Miami, for example, the teacher could say the city's Fire Department has only a few Hispanics in the upper ranks and the city commissioners want to have more Hispanics to reflect their proportion of the population in Miami. The Department gives a promotion test and awards the promotions, and pay raises, to several Hispanics even though they scored under their Anglo colleagues. On paper have the role playing minority students complete the following sentence:

"I would take (or turn down) the affirmative action promotion because. . . ." At the same time, have the non-minority role playing students, who have been passed over for the promotion, complete the following sentence:

"I object to (or accept) the affirmative action plan because . . . ." After a few minutes, and before any class discussion, require all students to complete one more sentence:

"The weaknesses with my reasons that I have just listed are . . . ." Allow the groups to meet for a few minutes to pool their ideas and prepare the best arguments. Then begin a discussion with either a representative from each group or an open discussion. (There is never any shortage of opinions on this controversial topic.)

On the third day, the Supreme Court decisions on affirmative action need to be studied. The teacher can present the cases in a lecture. In other classes it may be beneficial to have students write reports that focus on Justice Brennan's opinion for affirmative action in *Weber* that stressed the "spirit of the law," and Justice Rehnquist's dissent that emphasized the "letter of the law."

EVALUATION

Evaluating the students' grasp of the historical facts and Supreme Court decisions can be done with an objective test. Evaluating whether a developed value judgment has been formed is not as simple and necessitates a personal essay. The crux of the matter is that an opinion be supported with reasons for one side and a rebuttal against the other side.

TIPS FROM THE TEACHER

During the class discussion segment, let the students have the floor but be prepared to play advocate to both sides. To those minority students who would accept an affirmative action promotion, raise such taunting question as: "Isn't affirmative action a latent form of racism since it is based on the idea that minorities cannot make it on their own?"; or, "Won't the white majority be forever suspicious about the quality of minority workers who get their positions through affirmative action rather than strict competition?" To those who criticize affirmative action as being reverse discrimination, raise such questions as: "Am I my brother's keeper?" (Genesis 4:10); or, "How serious is this nation's effort to create a just society if we cannot give the most suppressed citizens a real opportunity to share in the American Dream?"

The service you render in promoting a thoughtful analysis of this subject may make an invaluable contribution to the national reconciliation of the sin of discrimination.

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Wisconsin Nullifies the Fugitive Slave Law

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INTRODUCTION

This lesson explores the issue of states' rights and the doctrine of nullification by using a more obscure example of its use, an attempt by the Wisconsin Supreme Court to nullify the Fugutive Slave Law. Traditionally the U.S. History course focuses on the nullification/states' rights issues prior to the Civil War by considering in general and philosophical terms the Kentucky and Virginia Resolutions and the South Carolina Exposition and Protest. The material presented here provides a case study approach to the issues and is, therefore, much more emotionally charged. This lesson would fit into a U.S. History course in the 1850's period leading to the Civil War. Also, suggestions are given for using this information to develop thinking skills.

AUDIENCE

High school U.S. History classes

TIME TO COMPLETE

One or two class periods, depending on the teacher's use of the thinking skills suggestions.

GOALS

As a result of this lesson, students will:

- understand the issues surrounding the Fugitive Slave Law, the States Rights position and Nullification and the highly emotional nature of the slavery issue in pre-Civil War America
- apply the information provided in the case study included in this lesson
- consider the issue of whether people are obligated to obey a law which they consider immoral
- develop and improve thinking skills by analyzing cause-effect, fact vs. opinion, logical reasoning, judgment and decision-making

MATERIALS

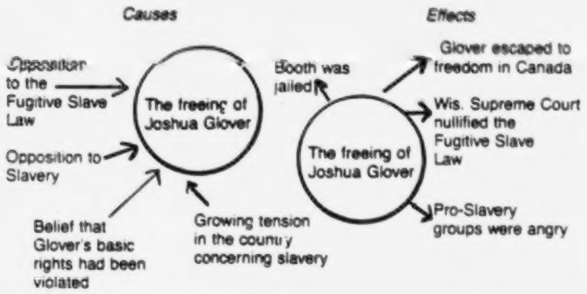
Each student should be given a copy of the enclosed reading, "Freemen to the Rescue." Each student should have a copy of the thinking skills worksheets.

PROCEDURES:

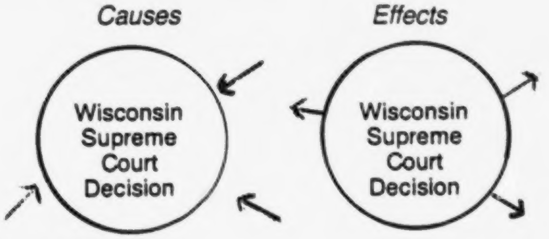
1. Have students read the article, "Freemen to the Rescue," either in class or as homework. Ask one student to explain what happened in this article. When that student has completed the description, ask other students to add other information.
2. Ask a student to explain the major points made by Booth's lawyer, Bryon Paine, before the Wisconsin Supreme Court. Ask the students to name at least two other examples from U.S. History which had used the same nullification argument. Students should be able to identify the Kentucky and Virginia Resolutions and the South Carolina Exposition and Protest.
3. Ask the students whether they think the people should have broken into the jail and freed Joshua Glover. After tallying the number who believe the action was right and the number who believe it was wrong, the teacher should ask various students why they responded the way they did; and these reasons should be written on the chalkboard. This should result in a listing of the basic issues of disagreement over states' rights versus national power, the constitutionality of the Fugitive Slave Law and the issue of obeying a law considered immoral. The teacher could ask how the Supreme Court of Wisconsin answered the question, "Are slaves people or property?" How did the Dred Scott decision answer that question? This could be the end of the lesson depending on the teacher's goals.
4. If the teacher is interested in using this article to develop or improve other thinking skills, the following suggestions might be helpful:

Cause-Effect Relationships

The teacher could draw a circle on the chalkboard and label it, "The freeing of Joshua Glover," and then could ask the students what led to this incident. As students suggest various causes the teacher draws arrows pointing into the circle. After the class has named all the causes they can, the teacher draws another circle on the chalkboard and labels it the same as the other circle. Then the teacher asks what happened as a result of this incident. Each effect would be written above an arrow pointing out from the circle. The following diagram is an illustration of this:


Causes
Effects
Opposition to the Fugitive Slave Law
Opposition to Slavery
Belief that Glover's basic rights had been violated
Growing tension in the country concerning slavery
The freeing of Joshua Glover
Booth was jailed
The freeing of Joshua Glover
Glover escaped to freedom in Canada
Wis. Supreme Court nullified the Fugitive Slave Law
Pro-Slavery groups were angry

For the guided practice portion of this exercise divide the class into small groups and have each group develop the causes and effects of the Wisconsin Supreme Court decision to nullify the Fugitive Slave Law. Have a person in each group draw a circle around "Wisconsin Supreme Court Decision" and then place causes for this decision with arrows pointing toward the circle and then effects with the arrows pointing outward as follows:


Causes
Effects
Wisconsin Supreme Court Decision
Wisconsin Supreme Court Decision

Fact vs. Opinion

The following paragraph is quoted from the reading:

> "It was not clear how Garland had found Glover, but people believed that Turner, the free black man, had been involved. Turner had visited Missouri the previous winter and reportedly had talked with federal officials. It was likely that Turner told them about Glover, but it was not clear why Turner would have done so. It was possible that he hoped for a reward from Garland or that he feared punishment under the Fugitive Slave Law, because he knew Glover was a runaway slave. One thing is certain—Glover was captured."

Based on this paragraph which of the following are facts (F) and which are opinions (O)?

____ 1. Garland found Glover, the runaway slave.
____ 2. Turner, the free black man, was involved in helping Garland find Oliver.
____ 3. Turner had visited Missouri the previous winter.
____ 4. Turner told federal officials about Glover.
____ 5. Turner hoped for a reward from Garland.
____ 6. Turner revealed where Glover was because he feared punishment under the Fugitive Slave Law.
____ 7. Glover was captured.

Have students cluster into small groups and select the statements of fact and opinion from another paragraph selected by the teacher.

Logical Reasoning

Explain the "If, then" reasoning concept: If Congress passes a law, then the citizens must obey it. The Congress passed the Fugitive Slave Law; therefore, the citizens of the United States must obey it.

The teacher might write the following on the chalkboard and have the students complete it: If a slave ran away from his/her master, then law enforcement officials all over the nation had to help locate and return that runaway slave. Joshua Glover was a runaway slave; therefore, . . .

The teacher might write the following example on the chalkboard and have the students complete the second sentence. If a person is a citizen of the United States, then the government must protect his civil rights. The court ruled in the Dred Scott case that black people were not citizens of the United States; therefore, . . .

EVALUATION

The teacher could evaluate throughout the exercise by judging participation. As a culminating evaluation the students could write an essay explaining why the action of the mob in freeing Glover was right or wrong. Or the students could list the reasons why someone might support or oppose the action of the mob. For the skills development the teacher could produce other examples of cause-effect, fact-opinion, and logical reasoning which would test the understanding of the students.

TIPS FROM THE TEACHER

Teachers could expand the discussion to include a contrast between civil disobedience and vigilantism. For more information on developing thinking skills write to the Center for the Teaching of Thinking, 21412 Magnolia Street, Huntington Beach, CA 92646.

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HANDOUT 1

FREEMEN TO THE RESCUE

On a cold night in March 1854, there was a rattling at the door of a small cabin near Racine, Wisconsin. Someone was trying to get in. A few black men were inside and they remained silent. The door was locked securely and the rattling stopped. One of the men was a slave who had escaped from the South. There were rumors that slave-catchers were in the area. As soon as possible the man moved on; he did not want to take a chance of being returned to slavery.

The fearful incident at the cabin was not an isolated event. There was a national debate about slavery and how runaway slaves should be treated. The arguments and emotions of the debate affected virtually everyone in the United States.

In 1850, the Congress had passed the Fugitive Slave Law. According to this law, federal commissioners in the Northern states were given the power to return escaped slaves to their masters. The escaped slaves were to have no jury trial; only the word of their supposed owners was necessary to claim the runaway. Anyone who interfered with the carrying out of the law was to be fined and placed in prison.

Northern opponents of slavery were outraged by the Fugitive Slave Law. Antislavery groups wrote resolutions condemning the law and urging its repeal. In Wisconsin, for example, one resolution said the law was "directly subversive of the principles of Liberty, in violation of Constitutional Rights, and at war with the plainest dictates of humanity."

Some people protested by working for what was known as the Underground Railroad. These people secretly helped runaway slaves by providing money, hiding them from slave-catchers, and aiding their safe arrival in Canada. Occasionally anger against the law was more open and direct. Such direct action became the case in Wisconsin.

Joshua Glover, a runaway slave, had been one of those playing cards at the cabin near Racine. He had been invited to the game by Nelson Turner, a free black man. The mysterious rattling at the door had occurred the previous evening. This night there was a loud knock at the door. "Don't open it until we know who's there," whispered Glover. Turner ignored him and immediately opened the door.

Benjamin Garland, two federal marshals, and several other men burst into the room. They rushed toward Glover and beat him to the floor. The bleeding Glover was dragged away into the cold night.

Glover has escaped from slavery in Missouri two years earlier. Garland had been his master. Now Garland, working legally under the Fugitive Slave Law, had tracked him down. Glover was taken to Milwaukee and placed in jail. As soon as possible, Garland intended to take Glover to a federal commissioner, identify him as a runaway slave, and return him to Missouri. Garland was following legal procedures.

It was not clear how Garland had found Glover, but people believed that Turner, the free black man, had been involved. Turner had visited Missouri the previous winter and reportedly had talked with federal officials. It was likely that Turner told them about Glover, but it was not clear why Turner would have done so. It was possible that he hoped for a reward from Garland or that he feared punishment under the Fugitive Slave Law, because he knew Glover was a runaway slave. One thing is certain—Glover was captured.

It appeared that Glover would be returned to slavery. There were some people in Wisconsin, however, who were determined to prevent such an outcome. Sherman Booth was one of them.

When Booth—a newspaper editor—heard of Glover's capture, he was furious. He had long been a loud and active antislavery advocate. He often spoke at public meetings, and his newspaper editorials practically screamed against slavery and the Fugitive Slave Law.

On Saturday, March 11, Booth mounted his horse and rode into Milwaukee. Along the way he stopped and urged people to attend a protest meeting in front of the courthouse. It was reported that he shouted "Freemen to the rescue!"

Later in the day a few thousand people gathered near the courthouse. Speeches were given and the crowd roared its disapproval of slavery, slave-catchers, and the Fugitive Slave Law. One speaker said that the people should take the law into their own hands in protest or they might become slaves themselves. Booth gave a number of speeches. He said that the people should not break the law but should do everything possible to show their disgust with it.

Late in the day some angry members of the crowd took action. They charged the jailhouse where Glover was being held. Doors were battered down, and Glover was released and was whisked away. In a few days Glover found himself safely across the Canadian border.

Booth had not been with the mob that attacked the jail, but he was considered the one who inspired the people to take action. Booth later said that he was trying to get a trial for Glover and that he opposed the violent mob action. Nonetheless, Booth was regarded as the man who brought about Glover's escape. In his newspaper Booth boldly wrote: "We send greetings to the Free States of the Union, that, in Wisconsin, the Fugitive Slave Law is repealed! The first attempt to enforce the law, in this state, has signally, gloriously failed! NO MORE COMPROMISE WITH SLAVERY!"

Many people were pleased that Glover had been freed but did not approve of the mob violence. One newspaper editor wrote that the people hated to see law-breaking but that the laws dealing with slavery were so "inherently unjust that no good man can or will obey them."

Federal authorities took quick action. On March 15, Booth was arrested and charged with helping Glover escape. Before his trial began, Booth and his lawyer, Byron Paine, went to the Wisconsin Supreme Court.

At the state court Paine argued that the Fugitive Slave Law was unconstitutional. He said that because no jury trial was allowed, accused runaway slaves were losing their liberty without the due process of law guaranteed by the Constitution of the United States. He also presented a states' rights argument. He said that since each state originally had agreed to the Constitution, each state could decide whether or not a federal law was constitutional. By his argument the state court had the right to decide on the constitutionality of the Fugitive Slave Law.

The court agreed with Paine's position. The judges said the law was unconstitutional and Booth should be set free. The decision was publicized widely. Antislave groups throughout the nation praised the court and lawyer Paine.

Booth and Paine's victory celebration was short-lived. Federal officials believed the state court had exceeded its legal authority by declaring a federal law unconstitutional. Booth was rearrested in the summer and held for trial in a federal court.

The jury convicted Booth of aiding in the escape of Glover. He was sentenced to one month in jail and fined $1,000. Again Booth went to the state court and, again, the court ordered him freed.

The legal controversy continued. Finally, late in 1858, the Booth case reached the Supreme Court of the United States. Things did not look promising for Booth. In the previous year the Supreme Court, under Chief Justice Roger Taney, had ruled against Dred Scott, a slave seeking his freedom. The Court had said that slaves were property like any other piece of merchandise. Because of this, Taney said, the Fifth Amendment of the Constitution applied. According to the amendment, people were not to be denied their property except under due process of law. Slaves were property and the government was to protect slaveowners' property rights. Given the Court's opinion in the Dred Scott case, it was unlikely that the judges would support Booth.

The Court ruled against Booth. It said the Fugitive Slave Law was constitutional and that the state courts of Wisconsin had no right to interfere with federal laws. Taney said that if states had the power to decide which federal laws they would obey, it would be virtually impossible to enforce any federal laws consistently throughout the states. Booth was rearrested in March 1860 and placed in jail again.

In the meantime, Booth's former lawyer, Paine, had been elected to the Wisconsin Supreme Court. Booth again appealed to the state court, but Paine ruled against him. Paine said that the Booth case was now a federal matter and that the state court could not legally take action. The judgment of the United States Supreme Court prevailed.

While Booth was in jail a number of public meetings were held and speeches were delivered praising states' rights and condemning the federal government's treatment of Booth. Another jail break was planned and, on August 1, 1860, a group of men entered the Milwaukee jail. They overpowered the jailer and helped Booth to freedom.

Booth was at large for over a month before he was recaptured by federal officers and returned to jail. Eventually Booth was freed legally. In March 1861, just before newly elected President Lincoln took office, Booth was pardoned by President Buchanan.

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"The Constitution: Reliving 200 Years"

Nin Lee

Franklin Junior High School
Franklin, Tennessee

INTRODUCTION

"The Constitution—Reliving 200 Years" is a play written for upper elementary to high school students. It is designed to depict the events leading up to the constitutional convention, the compromises necessary at this convention, and the subsequent amendments to the document. In addition to public speaking there are projects that relate to music, dance, and art. In the play the students will not just be reading American history, they will be living it. It will make the Constitution, which is a part of any United States history course, more easily understood.

AUDIENCE

Upper elementary grades to high school

TIME TO COMPLETE

The length of time is determined by how elaborate a production is given. With simple reading of the play, one class period is needed. With music, dance, costumes, and scenery, a longer period of time is required.

GOALS

As a result of this lesson, students will:

- gain knowledge of the Constitution
- benefit from public speaking

MATERIALS

A copy of the play is the only required material. If music, costumes, dance, and scenery are used, then cooperation with the music and art departments will be helpful.

PROCEDURES

The play must be rehearsed, parts learned, and students taught to speak clearly and with feeling.

EVALUATION

The students will be proud of their part in this activity and feel that they have gained knowledge and confidence. The audience will show its approval.

TIPS FROM THE TEACHER

This play was presented on a stage with no curtains so there was only one stage setting. A podium was placed on the left of the stage where Consuela the Cat stayed the entire play. In the center of the stage were two tables with chairs for the speakers at the constitutional convention. This area was also used for the two newsboys to try to sell papers. On the right was another podium for all of the other speakers.

The newsboys carry papers that will have printed on the front their position on the adoption of the Constitution—Federalist or Anti-Federalist.

After the 15th Amendment is a good time for a Negro spiritual such as "Let My People Go" or "We Shall Overcome."

Before the speaker for the 19th Amendment several girls and boys paraded across the stage carrying signs in favor of women's right to vote. After the speaker for this amendment finishes would be a good time for the song "You've Come A Long Way, Baby," or a dance such as the Charleston.

When the play is over and the entire cast is on stage the audience could be asked to join in the singing of "America The Beautiful" or "God Bless America."

If more parts are needed, have the students research some additional amendments and write the parts. Consuela the Cat's part could very easily be divided. The first Consuela could cover through the constitutional convention and the second Consuela begin with the ratification and the Bill of Rights.

If you have fewer students than parts, then some students may have multiple roles.

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HANDOUT 1

THE CONSTITUTION
RELIVING 200 YEARS
BY
NIN LEE

CAST

Consuela the Cat
Thomas Jefferson's speech
Benjamin Franklin
George Washington
Edmund Randolph
William Paterson
Roger Sherman
George Mason
Two newspaper boys
Patrick Henry
13th Amendment
14th Amendment
15th Amendment
19th Amendment
26th Amendment
Pro and Con on 26th Amendment

Consuela the Cat

Good morning everyone.

Please, permit me to introduce myself. I am Consuela the Cat. Some of you may remember my cousin, Murgatroyd, the White House Mouse. In our earlier days Murgatroyd and I used to play a lot of cat-and-mouse games. I really had to be quick and take advantage of all nine of my lives.

Speaking of nine lives, I really don't need but one of those nine because, like my cousin, Murgatroyd, I too am immortal. We both have been around this planet since dirt was new, the Rocky Mountains were only ant hills, and Mrs. Lee had black hair. Does that tell you anything?

While cousin Murgatroyd became interested in exploration of new worlds and living in buildings like the White House, I traveled a different path and listened to a different drummer. I became a people watcher! I watched societies interact with each other and share and care for each other. Before you could say "scat cat" there would be so many people living together that there would have to be some sort of rules and regulations—not just informal rules, but rules that were written down. In some of the countries I visited a long time ago, these rules or laws as they became known had either been written by a king or a dictator, an official of the church, or in a few cases, by the people.

When Murgatroyd decided to move to America and settle down, I came with him. When we arrived here, America was still a part of England and was using the old English laws. Americans, however, chose to break that association with England. I can still hear Thomas Jefferson's explanation of why we did this. Notice how I said "we." I had already identified myself as an American.

Thomas Jefferson

Reason for the Separation from England

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal stations to which the laws of nature and of God's nature entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

Consuela the Cat

The new country that was formed could no longer depend on England for her laws and rules, so a new set had to be written for these United States. After fighting the Revolutionary War to end the control of a strong central government and the rule of a tyrant, the framers of this new constitution did not want to replace one evil with another. So, John Dickinson, for the most part, wrote the Articles of Confederation which provided for a very weak central government. This was probably the only type of government that would have been accepted by this new country. We were not ready to replace an English King George with an American King George. So, we worked hard to make this new government work. But, when a government can't tax, can't control trade between the states, and can't even force a state to obey a law passed by the Congress, you know you are in trouble. Something had to be done.

All of the 13 states were invited to come together to discuss the problem and see if they could make the Articles of Confederation work. They met in Philadelphia in 1787. Why Philadelphia? It's a place where we had had some great successes. We wrote our Declaration of Independence here, the Continental Congress conducted much of the Revolutionary War from this city, and the Articles of Confederation was signed here. Plus, it's about halfway between New Hampshire and Georgia.

Fifty-five men representing 12 states came together in Philadelphia. I remember listening to some of the meetings and the comments of some of the representatives.

Franklin

You cannot know how you honor Philadelphia with your presence, General Washington. We are so pleased that you are here.

Washington

Thank you, Mr. Franklin, but please—you need not call me General any more. Those days of war and winning our independence are over. Our problem now is to save that for which we fought. We need to strengthen the Articles of Confederation.

Franklin

That is so true. We do have our work cut out for us. Oh look, here comes Mr. Randolph from Virginia and Mr. Paterson from New Jersey. I would enjoy hearing their thoughts on this subject.

Randolph
Paterson

Good morning, Mr. Franklin and Mr. Washington.

Franklin

Welcome to Philadelphia, gentlemen. Mr. Paterson, what do you think should be the first order of business at this convention?

Paterson

Well, the first item usually on the agenda of a meeting is to select someone to be chairman. As one of the elder statesmen of this country, Mr. Franklin, would you consider being chairman?

Franklin

Thank you for thinking of me, Mr. Paterson, but I feel that I am too much of an elder statesman. You need someone younger, someone the people trust, someone who is a proven leader, and someone who is well loved by the people.

Randolph

You have just described my fellow Virginian, George Washington. He is perfect for the position of chairman. Well, George, what do you say?

Washington

If the delegates, when they vote, decide that I will be the best choice, then I will accept. What is important is that this convention must succeed and if my being elected chairman will make this possible, then I will do my best.

Randolph

Thank you, George, for that decision. The delegates are going to be facing many difficult decisions this summer. I am going to submit a plan calling for almost a new type of structure in our government. I am going to propose having a chief executive, a two-house legislature instead of one, and basing representation in these two houses on population only. The larger states feel that they don't get enough representation in Congress.

Paterson

Now, wait a minute! That doesn't sound like a revision of the Articles of Confederation. That sounds like an entirely new type of government. And why two houses? What's wrong with just the one? As you know, I am from New Jersey and we like the idea of one state-one vote. This way the larger states like your Virginia, Mr. Randolph, cannot totally control Congress. We like the idea of equal representation regardless of size.

Franklin

This is an interesting plan of yours, Mr. Randolph, but what about the question of slavery? Are you going to count slaves as a part of your population for the purposes of representation?

Randolph

Why certainly, Mr. Franklin. A slave will be counted as a person.

Paterson

You can't have it both ways, Mr. Randolph. A slave is either a person to be counted as a person or is property as you claim and therefore cannot be counted as a person. If he is only property, does this mean that a farmer in New Jersey can count his horses and cows because they are also his property?

Randolph

Of course not! How ridiculous! You are not even trying to understand our "peculiar institution."

Paterson

Well, you don't understand our side either!

Franklin

It looks as if my contribution to this convention may be as a peacemaker. Here comes Mr. Sherman from Connecticut. Maybe he will be able to come up with a solution or a compromise to the problems that you two men have.

Sherman

I hope you don't think I am rude but I couldn't help overhearing the debate between Mr. Randolph and Mr. Paterson. I do have a few suggestions that would involve compromise on both sides but you might want to think about these ideas. Consider, for example, having a two-house legislature with one of the houses having representation based on population to satisfy the large states like Virginia and the other house having equal representation. This would satisfy the small states like New Jersey and Georgia.

The question of slavery is a little more difficult to resolve. If you will not consider a slave as a whole person, then why not count him as part of a person—maybe 1/2 of a person or 3/5 of a person. This idea, as ridiculous as it sounds, just might satisfy both sides.

In our meetings all sides of these issues must be presented and discussed. Surely, we can come to some sort of compromise that will be acceptable to all.

Washington

Hello, Mr. Mason. We were just discussing the direction this convention is taking. What do you see?

Mason

So far, I have heard no one talk about individual rights such as freedom of religion and speech, or the right to bear arms, or the right to a speedy trial. Where are those rights and guarantees that we have as human beings going to be in this constitution? We must have our basic rights guaranteed to us!

Consuela the Cat

All through the long hot summer of 1787 the debate continued until finally there emerged a document that 39 men signed and supported.

Now the decision to adopt this new Constitution was left up to the people of the United States. Did they want to change? Was the new Constitution better than the old one? How was it better? How was it worse? Two opposing groups emerged. The Federalists were in favor of this new Constitution and the Anti-Federalists were opposed to it. Newspapers of the day were also divided.

HEADLINES

ANTIFEDERALIST

Read all about it. New Constitution could lead to our leader becoming a dictator.

Headline reads—States would lose rights under the new Constitution.

Opponents of new Constitution state that Big is Bad! Government would be too far away from the people.

No guarantees for basic rights in the Constitution.

Articles of Confederation work. Why change?

FEDERALISTS

Buy your paper here! New Constitution shows how people elect their own leaders.

Constitution shows states sharing power with federal government.

Proponents of the new Constitution state that Big is Good! Government could protect you better.

Amendments considered for new Constitution to guarantee American citizens rights.

The government under the Articles does not work. We must change!

Consuela the Cat

When Delaware ratified this document and eight other states rapidly followed this example, we had a new set of laws to govern us—a new Constitution. This occurred in 1788, and the first item on the agenda of this new government was to select a president, and who better than George Washington. So, as you can see, we had not replaced one King George with another King George, but, rather, a President George—chosen not by blood lines but by the people.

But don't let us forget George Mason and his concern for a Bill of Rights. Patrick Henry from Virginia was just as outspoken that guarantees for individual rights and liberties be included in this new Constitution.

Patrick Henry

Speaking on The Bill of Rights

Most of you know me. My name is Patrick Henry and I am from Virginia. No one has ever accused me of being a shy and retiring person. I have always made known my feelings and beliefs. Remember back in 1765 when I made my speech threatening the life of King George and how I ended that speech with "If this be treason, make the most of it" or the speech I made later where I said "Give me liberty or give me death." I made those speeches to encourage our separation from England.

What I have to say to you today is of equal or maybe greater importance than that. The issue facing us right now is a lack in this new Constitution. You may call it a gap or a deficit—whatever. This lack, gap, deficit in the Constitution involves rights that I feel should be guaranteed to us by the new government.

I'm talking about basic rights such as the right to be safe from unreasonable searches, or the right to worship the way I choose, or the right to a trial by a jury. These are not unreasonable or frivolous. They are basic to every American citizen.

I know that the Federalists claim that the Constitution would give us these rights but I want to see them written down in this document.

Consuela the Cat

The ten changes or amendments as we call them were added in 1791. This living Constitution is so adaptable, so flexible, and so elastic that we have only amended it 16 more times in almost 200 years.

Three of these amendments came about as a result of a Civil War fought between the North and the South in the 1860's. One of the major issues of this war was slavery and these three amendments addressed this question. When the Constitution was written in 1787 slavery was a legal institution, a slave was property and could be bought and sold like any other property, and was only counted as 3/5 of a person. He was not a citizen, had almost no rights, and could not vote. The 13th, 14th, and 15th amendments changed this.

Amendment Thirteen

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Amendment Fourteen

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment Fifteen

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Consuela the Cat

Amendment Nineteen

The 19th amendment franchised almost half of the population of America. What does franchised mean? It means that, for the first time, in 1920 women across the United States were given the right to vote.

What are women's rights?
Are they different from men's rights?
Are they different from human rights?

Two hundred years ago, when this nation was founded, no one was asking questions like this. It was understood that "All men are endowed by their Creator with certain unalienable rights," that the subject "men" meant exactly that. The author of the Declaration of Independence was not speaking of all mankind. Women, like children and slaves, were not endowed with any legal or political rights.

The excuse for this undemocratic side of the world's first democracy was that women did not need the vote. They were protected by men: by their fathers when they were young and by their husbands when they married. It was for their own good. Women weren't endowed by their Creator with the abilities that would make the ballot useful to them.

And then along came Lucretia Mott, Elizabeth Cady Stanton, Lucy Stone, and Susan B. Anthony; this list could go on and on. These women questioned past laws, protested the injustices of these laws, and demanded change. From their first meeting in Seneca Falls, New York, in 1848 to the passage of the nineteenth amendment in 1920, years of humiliation, jail sentences, and fines were suffered by women asking for the right to vote.

We are very proud here in Tennessee to be the state that cast the deciding vote. Thirty six states had to ratify this amendment before it could become part of the Constitution and 35 states had done this. Tennessee was to become number 36. The vote count in the Tennessee House of Representatives had been expected to be a tie at 48-48. But, a young man named Harry Burns, a 24-year-old from a rural conservative district that opposed giving women the right to vote, voted for it. He explained that he had promised his mother that he would vote for it so that she could have the right to vote.

Maybe Harry Burns was remembering one of the many slogans of the day in support of women's suffrage—"Remember, your Mother is a woman."

Consuela the Cat

Twenty-Sixth Amendment

There was a magic formula, according to ancient superstition, for determining when a boy became a man. The mystical number seven was multiplied by the number three, the symbol for the Holy Trinity, and that made 21 the age of manhood.

The Founding Fathers had set no age limit in the Constitution for voting. They let each state decide, and the age of 21 became the voting age in all states.

There have always been arguments for lowering the voting age, especially for those in military service.

Consuela the Cat

Pro and Con on Twenty-Sixth Amendment

Pro — If you are old enough to fight and die then you are old enough to vote.

Con — Just because a soldier has physical strength and has the ability to follow commands does not mean that he has the mature judgment required for intelligent voting.

Georgia in 1943 became the first state to allow 18 year olds to vote. Their slogan was "Fight at 18, vote at 18." But for the next twelve years Georgia remained the only state where young people could vote.

Over the years Kentucky, Hawaii, and Alaska also lowered the voting age in their state. About one half of the young people between the ages of 18 and 21 were married and many had families. Their age group was considered as adult by the courts and in every way—except for voting rights.

President Nixon said, "Can we, in good conscience, expect youth to work within the system when we deny them that very opportunity." On June 30, 1971, the 26th amendment became part of the United States Constitution with the guarantee that:

The right of citizens of the United States who are 18 years of age or older to vote shall not be denied or abridged by the United States or by any state on account of age.

Consuela the Cat

This experiment with democratic government has been tremendously successful. It has survived almost 200 years of change. When the Constitution was written, the United States had less than 4 million citizens. Today, our population is almost 250 million. The Constitution has grown and changed through the years to meet the needs of the nation. Today it is the oldest national Constitution in the world.

When the constitutional convention was over, someone asked Ben Franklin, "What you have created here?" He replied, "A republic, Sir, if you can keep it."

Let us hope that the lamp of liberty will continue to shine for another 200 years and we can still be able to say to Ben Franklin, "Sir, we have kept your republic."

Suggestions for music

Negro spiritual such as "Let My People Go" for the 13-14-15th Amendments

"You've Come A Long Way, Baby" for the 19th Amendment

"America, the Beautiful" sung by cast and audience at the end.

Woodrow Wilson's Stroke: Should Disability Have Been Declared?

Francis O'Malley

Padua Academy
Wilmington, Delaware

INTRODUCTION

No fewer than six Presidents including Lincoln, Garfield, Wilson, Franklin Roosevelt, Eisenhower and Lyndon Johnson have been so disabled for varying lengths of time that they could not carry on the duties of their office. By analyzing and deciding the most prolonged case of Presidential illness, that of Woodrow Wilson, students will arrive at an understanding of the complexities in attempting to declare disability. The need for the 25th Amendment will also be realized. Students will be asked to dramatically re-enact the actual events surrounding President Woodrow Wilson's incapacitating stroke. Then, acting as a modern day Cabinet, students will be asked to decide the case of Wilson's disability in accordance with the provisions of the 25th Amendment, which was ratified in 1967.

This lesson is useful in teaching about Article II, the 25th Amendment, and the Wilson years 1919-1920. It is suggested that this lesson follow the unit on the defeat of the Treaty of Versailles when used in conjunction with a United States history course since Wilson's condition may help to explain the Treaty's defeat.

AUDIENCE

Senior high school/United States history or government classes

TIME TO COMPLETE

Two class periods

GOALS

As a result of this lesson, students will:

- understand the Twenty-fifth Amendment
- practice thinking and decision-making skills

MATERIALS

1. Props (optional). Be creative in designing your set. Students are valuable resources. A "bed," nightstand, waterbottle and a concealed area accessible through a door are the only essentials. Your classroom door will serve the purpose nicely. It will be the entrance to President Wilson's bedroom and bathroom.
2. Handout 1—Article II and Presidential Disability
3. Handout 2—"Woodrow Wilson Suffers a Stroke" (Re-enactment)
4. Handout 3—The 25th Amendment and Presidential Disability

PROCEDURES

1. Open the lesson by asking students if they think that there are any circumstances, other than "high crimes" or "misdemeanors," that would justify and necessitate relieving a President of his powers and duties. Lead students into a discussion about disability.
2. Distribute Handout 1. Ask students to read Article II, Section 1, Clause 6 and answer the comprehension questions. Go over each question with the class. The vagueness of this clause will result in much uncertainty. This confused state of mind will place the students in a quandary comparable to that in which Wilson, his advisers, and Congress found themselves in 1919.
3. Depending on the amount of times which you have to devote to this subject, the lesson can be presented in one of three ways. Ideally, students should be assigned beforehand to the roles in the re-enactment. Give them enough time to prepare for the classroom re-enactment.

   For those pressed for time, roles can be assigned on the day of class. Students, sitting at their desks, can simply read their parts aloud. As a last resort, distribute xeroxed copies of the re-enactment and have students read silently to themselves.

   In the event that you do allow for a dramatic re-enactment, it is suggested that the teacher serve as narrator. Students who view the play are to be told that they will be asked to assume the role of Wilson's Cabinet in order to decide his disability. Once the re-enactment is completed, the actors will be asked to serve as members of Congress.

Later, they will be asked to resolve a disability conflict between the President, who does not accept his "disability," and his Cabinet, which has certified it.

4. Tell the students that they are about to view, hear or read about a retelling (Handout 2) of actual events which took place in 1919 and 1920 when President Wilson suffered a serious stroke and was recuperating from it. The entire script is based on the testimony of those whose roles they will be playing, as well as on the research of historians and medical experts. Tell the "Cabinet-students" that they will be asked to decide the President's ability following the re-enactment.
5. Re-enact the drama (or have students read it).
6. Immediately after the re-enactment, ask students if they are clear as to the procedures outlined in Article II for declaring disability. In all likelihood, they will not be. Distribute Handout 3— "The 25th Amendment and Presidential Disability." Tell them that the Constitution was amended in 1967 in an attempt to clarify the procedures for declaring disability and related issues. Go over the discussion questions with the entire class and ask the "Cabinet-students" to decide President Wilson's disability using the procedures outlined in the 25th Amendment. Have the student who played the role of Vice-President Marshall lead the discussion so that the rest of the class hears their arguments.
7. Next, set up a scenario (if it has not developed already) in which the Vice-President and the Cabinet have certified the President's disability. Have the President attempt to reclaim his powers by notifying Congress that no disability exists. Assuming that the Cabinet has recertified the disability, inform the "student-Congress" that it is now up to them to resolve the conflict within the executive branch. Remind them that a ⅔ majority is needed.
8. Debrief students by raising the following questions for class discussion:
   a. Which factor was most influential in your determination of Wilson's disability?
   b. What reasons can be given to explain the fact that Wilson was not declared disabled?
   c. Does the wording of the 25th Amendment leave unanswered any questions regarding Presidential disability?
   d. What are the advantages and/or disadvantages of having the Vice-President and Cabinet certify disability?

EVALUATION

As the lesson progresses, you will be able to determine the students' level of understanding as each discussion question is addressed. A quiz, based on the discussion questions, may be developed as a final evaluation tool. Ask students to apply their legislation to other cases of Presidential disability.

TIPS FROM THE TEACHER

You may want to encourage more creativity within the classroom: first, by allowing students to view the play prior to introducing them to the Constitution's provisions on disability; second, by having them draft their own amendment which is designed to handle cases of Presidential disability. As a follow-up activity, have the students compare their own legislation to the 25th Amendment.

In dealing with younger or less talented students, you may want to create a scenario which is analogous to a case of Presidential disability, i.e., a teacher is so ill that it is necessary to hire a substitute as a temporary replacement. Many of the discussion questions raised in this lesson apply.

Information on other cases of Presidential disability and on the evolution of the 25th Amendment can be found in the two books by John D. Feerick which are cited in the bibliography.

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HANDOUT 1
"ARTICLE II AND PRESIDENTIAL DISABILITY"

Article II, Section 1, Clause 6:
Death, Removal, or Inability of President to Serve

"In case of the Removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

Discussion Questions: Students should be instructed to answer the following questions based on their understanding of Article II.

1. Who assumes the duties or office of the President in the event of disability?
2. Who has the authority to certify the President's disability or inability?
3. What procedure must be followed in declaring Presidential disability or inability?
4. Did the Founding Fathers choose to use two separate words ("disability" and "inability") to refer to two different conditions?
5. May the President's powers be removed only in the case of mental impairment or in cases of physical disability as well?
6. Does the officer upon whom Presidential powers and duties "devolve" become the President of the United States, or is he a temporary "Acting President" only?
7. For what length of time does the officer upon whom presidential powers and duties devolve, serve in his role as President?
8. May a "disabled" or "inable" President be declared "able" again? If so, by what means?
9. Does the President himself have any role in deciding his own disability?
10. Must a disability exist for a certain length of time before a President's powers and duties can be removed, or is the duration of a disability not a consideration?

HANDOUT 2

WOODROW WILSON SUFFERS A STROKE"

(RE-ENACTMENT)

The Characters: (in order of appearance)

Rear Admiral Cary T. Grayson - President Wilson's personal physician and trusted friend.

Woodrow Wilson - President of the United States from 1913 until 1921.

Edith Bolling Wilson - The President's caring and protective (second) wife.

David F. Houston - Wilson's Secretary of Agriculture.

Thomas R. Marshall - Wilson's Vice-President. He showed signs of anxiety when the seriousness of Wilson's condition and the topic of succession was discussed.

Robert Lansing - Wilson's Secretary of State who raised the issue of disability on more than one occasion and, partly as a consequence, was dismissed by Wilson early in 1920.

Joseph P. Tumulty - The President's personal secretary and trusted friend. Tumulty was part of the "bedroom circle" (which included Mrs. Wilson and Dr. Grayson) that guarded the President after his stroke.

Senator Alber Fall - Republican Senator from New Mexico. Fall was a political foe and critic of the President.

Dr. Francis X. Dercum - Neurologist who served as a medical consultant for the Wilsons.

The Script

Narrator: On September 25, 1919, while on a national speaking tour in which he was attempting to rally support for the Treaty of Versailles and U.S. participation in the League of Nations, President Woodrow Wilson fell ill in Wichita and was forced to cancel the rest of his trip. His close friend and personal physician, Cary T. Grayson, initially informed executive aides that "The President has suffered a complete nervous breakdown." Later, he released the following statement:

Dr. Grayson: (addresses the class) "President Wilson's condition is due to overwork. The trouble dates back to an attack of influenza last spring in Paris from which he has never entirely recovered. The President's activities on this trip have overtaxed his strength and he is suffering from nervous exhaustion. It will be necessary for his recovery that he have rest and quiet for a considerable time."

Narrator: The President arrived back in Washington on Sunday, September 28. Suffering from constant and throbbing headaches, he could not read, work or sleep. The First Lady, Edith Bolling Wilson, rose often during the course of each night to check on the President. At about 8:00 a.m. on October 2nd, Mrs. Wilson found the President sitting on the side of the bed trying to reach for a water bottle.

*Scene (The President sitting on the bed...one hand holding his head, the other reaching for a water bottle. Mrs. Wilson gets the bottle for her husband.)

President Wilson: "I have no feeling in my left hand. Will you rub it? But first, help me to the bathroom."

*Scene (Mrs. Wilson helps the President into the bathroom.)

Mrs. Wilson: "I'm going to call Dr. Grayson. Will you be all right for a few minutes?"

President Wilson: (feebly responds) "Yes"

*Scene (Mrs. Wilson leaves the room. The President falls unconscious to the floor, making a loud noise. Mrs. Wilson rushes back into the room.)

Mrs. Wilson: "Oh, my God!"

*Scene (Mrs. Wilson grabs a blanket, covers the President, and places a pillow under his head. She then closes the door to the bedroom. Dr. Grayson arrives, finds the door locked, knocks and is admitted. The President is cut on his nose and temple. Together, Mrs. Wilson and Dr. Grayson help the President into bed. Dr. Grayson walks away from the bed, turns to the class and says...)

Dr. Grayson: "My God, the President is paralyzed!"

Narrator: In the days that followed, the President remained bed-ridden as his condition got worse. Absolute rest was ordered. Mrs. Wilson, Dr. Grayson and the President's personal secretary, Joseph Tumulty, shielded the President from any work and agitation. Visitors were not permitted (not even the Vice-President or Cabinet members). The seriousness of the President's condition was revealed to few people. On Sunday, October 5, Tumulty spoke in confidence to Josephus Daniels, the Secretary of the Navy, and David Houston, the Secretary of Agriculture. Both were shaken by the news that Wilson had suffered a serious stroke and that his left side was paralyzed. Secretary Houston met with Vice-President Thomas R. Marshall that afternoon for lunch.

*Scene (Houston and Marshall eating lunch)

Marshall: "Tell me, David, how bad is it?"

Secretary Houston: "I know very little except that the President is a very sick man. I cannot reveal much."

Vice-President Marshall: (appearing very nervous) "If anyone should know what's going on it should be me. Dr. Grayson has no right keeping me in the dark. I have not been well informed of the affairs of this administration and it would be a great tragedy for this nation if I were to assume the President's duties without warning."

Houston: "There is nothing more I can say."

Marshall: "I do not like the situation in which I find myself. I'll tell you one thing...I'm not going to be the one to usurp the President's authority. I'll not expose myself to the wrath of a woman, especially if she is the wife of the President of the United States."

Narrator: Concerns about the health of the President and his ability to function as President led to the calling of a Cabinet meeting by Secretary of State Robert Lansing. Prior to the meeting, which was held on Monday, October 6, Secretary Lansing met with Joseph Tumulty and Dr. Grayson, both of whom had been keeping a close eye on the President. The sensitive issue of disability was raised.

*Scene (Lansing talking to Tumulty and Grayson, who get more and more defensive)

Secretary Lansing: "In view of the President's condition, I think it necessary to consider placing the duties of the President in the hands of Vice-President Marshall. I brought a copy of the Constitution and would like your thoughts on the matter." (Lansing reads from the Constitution)

"In case of the Removal of the President from office, ...or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-Presi...'"

Tumulty Interrupts: "Mr. Lansing, the White House is well aware of the Constitution. I have read it and do not find myself in need of any tutoring at your hands on the provision you have just read. Tell me something, however. Who has the authority to determine whether or not the President is disabled?"

Lansing: (pauses and in an uncertain fashion responds) "That decision would have to be made by you or Dr. Grayson, I suppose."

Tumulty: "Well, as long as the President is in his sickbed, I'll not be a party to ousting such a kind, loyal and wonderful friend. (Tumulty turns to Dr. Grayson and asks) Doctor...what are your thoughts."

Grayson: "I will not be a party to the President's removal."

Tumulty: "And rest assured that we will stand together if anyone outside of the White House tries to certify the President's disability."

Narrator: Secretary Lansing brought up the issue of disability again at the Cabinet meeting the next day.

*Scene (Lansing meeting with Secretary Houston and the rest of the Cabinet. Lansing should face the class as if they are the Cabinet)

Secretary Lansing: "If Wilson is unable to attend to the affairs of government, Vice-President Marshall should act as President."

Secretary Houston: "We really need to know more about the President's condition. Send for Doctor Grayson."

*Scene (Lansing goes to get Dr. Grayson and returns with him)

Secretary Houston: "Dr. Grayson, what can you tell us?"

Dr. Grayson: "The President's condition is touch and go. He should be bothered as little as possible. Any excitement may kill him. At this very moment he is already quite irritated by the fact that his Cabinet is meeting without his authority."

Narrator: After hearing about the President's irritated state, the subject of disability was quickly dropped. Nine days after his stroke it was announced that the President would not be allowed to leave his bed for an extended period of time. Thereafter, the President's "bedroom circle" (Grayson, Tumulty and Mrs. Wilson) closed ranks to protect the President from what they judged to be detrimental to his recovery. Admittedly, Mrs. Wilson decided which matters would be brought before the President for his consideration after consulting with the doctors.

*Scene (Tumulty delivering letters to Mrs. Wilson)

Tumulty: "Mrs. Wilson, I have been asked to deliver these letters to the President."

Mrs. Wilson: (looks over the envelopes...discusses a few with Dr. Grayson...sets some aside, and while walking towards the President's bedroom says) "Let me see how he is today."

*Scene (Mrs. Wilson leaves the classroom and returns a moment later)

Mrs. Wilson: (while handing over envelopes to Tumulty) "Here, Joseph. Please deliver these responses from the President."

Narrator: over 30 years later, unopen letters to the President were found and read for the first time. The confusion and frustration which resulted from the protective wall which had been built around the President led to angry accusations about the decision making process at the White House. A particularly scathing remark was made by Senator Albert Fall, a Republican critic of the President.

*Scene (Senator Fall angrily addresses the class)

Senator Fall: "We have no President. We have a petticoat government! Wilson is not acting. Mrs. Wilson is President. We have a President in petticoats!"

Narrator: The role played by Mrs. Wilson has been debated for years. In her personal memoir, written after the President's death, Mrs. Wilson recalled a conversation she had with Dr. Francis Dercum, a consulting neurologist.

*Scene (Mrs. Wilson conversing with Dr. Dercum)

Mrs. Wilson: "My husband's recovery cannot be hoped for unless he is released from every disturbing problem during these days in which nature repairs the damage which has been done. How can I protect him from these problems when the country looks to the President as leader?"

Dr. Dercum: "Madam, it is a grave situation but I think you can handle it. Have everything come to you; weigh the importance of each matter, and see if it is possible to solve them without the guidance of your husband. Every time you excite him, you are turning a knife in an open wound."

Mrs. Wilson: "Then had he better not resign, let the Vice-President succeed to the Presidency and he himself get that complete rest that is so vital to his life?"

Dr. Dercum: "No, not if you are up to the task. For Mr. Wilson to resign would have a bad effect on the country and a serious effect on our patient. If he resigns with the treaty not yet ratified, his greatest incentive to recovery is gone."

Mrs. Wilson: "Well, then doctor, I shall begin my stewardship. But, I will never make a single decision regarding the conduct of public affairs. I shall only decide what is important and what is not, and when to present matters to my husband, and when to withhold them."

Narrator: Thus emerged the rumors of a "Petticoat Presidency." Altogether, 180 days elapsed between Wilson's initial collapse and his attendance at his first Cabinet meeting on April 14, 1920. He did not get out of bed until the end of October (1919), and did not begin walking until after Christmas. During this period, only a handful of outsiders were permitted in to see the President. The first visitors, the King and Queen of Belgium, were received on October 31. Others included the Democratic minority leader, Senator Gilbert Hitchcock (a week later), the Prince of Wales (November 13), and Senators Hitchcock and Fall (December 15) who had actually been sent as the eyes of Congress. Vice-President Marshall saw Wilson for the first time in 1921 at the inauguration of the newly-elected President, Warren G. Harding. Those who did visit the President invariably attested to the clearness of the President's comments. It is not certain, however, whether Mr. Wilson was, at all times, so clear of mind. The President's partial recovery was very slow and gradual. As time passed, he became more active in the affairs of government. He did, however, miss 21 Cabinet meetings called by Secretary of State Lansing. Wilson also terminated his relationships with Lansing and with the wartime adviser, Colonel Edward House. Additionally, twenty-eight bills became law by default of any action on the part of the President. When the President finally did sign four bills into law on October 22, 1919, with the assistance of the First Lady, his signature was so illegible that a handwriting expert was hired to confirm its authenticity. On November 19, with the President still confined to his bedroom, the Treaty of Versailles was defeated in the United States Senate. Wilson had ordered Democratic Senators to reject any revisions in the Treaty even if such revisions were necessary for ratification. Worldwide pressure, some of which filtered through to the President, did not change the President's position. Although introduced in amended and original form again, the Treaty of Versailles was defeated, as were hopes for U.S. participation in the League of Nations. Some researchers have concluded that the stroke caused the President's thinking patterns to change, making it more unlikely for him to compromise. The President apparently denied some of the effects of his stroke, a condition common in stroke victims called agnosognosia, as well. It may be significant, however, to remember that the President himself did raise the issue of disability at one point. In Dr. Grayson's own memoirs, he recalled Wilson's comments which were brought up during the Treaty debates in the Senate.

*Scene (Wilson, in bed, speaking slowly to Grayson)

President Wilson: "I am seriously thinking about my duty to the country on account of my physical condition. My personal pride must not be allowed to stand in the way of my duty to my country. If I am only half-efficient I should turn the office over to the Vice-President. If it is going to take too much time for me to recover my health and strength, the country cannot afford to wait."

Narrator: Undeniably, President Wilson suffered a very serious stroke. The physical effects, including paralysis of the left side and impaired vision and speech, were real. The effects on the President's mental functioning are still being debated. One question remains to be considered: should Woodrow Wilson have been declared disabled, thereby permitting the duties of the office of the President to devolve upon Vice-President Marshall?

END

HANDOUT 3
"THE TWENTY-FIFTH AMENDMENT"

Section 3: President Declares Own Disability

"Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President."

Discussion Questions

1. What role does the President play in deciding his own disability?
2. Under what circumstances might a President choose to declare himself disabled?
3. Does the office of the President devolve upon the Vice-President, or is he considered an acting President only?

Section 4: Vice-President and Cabinet Declare Disability

"Whenever the Vice-President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President." Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice-President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after the receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."

Discussion Questions

4. Who is empowered to certify the President's disability in the event that he does not declare it himself?
5. Is it possible for the President to reclaim his powers once he has been declared disabled by the Vice-President and Cabinet?
6. Can a President who has been declared disabled be prevented from reclaiming his powers? If so, by whom?
7. If a conflict develops between the Vice-President and Cabinet, who declare disability, and the President, who asserts no disability, how is the disability conflict resolved?
8. What majority is required for Congress to certify Presidential disability?

Justice and the Constitution

John Pickering

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INTRODUCTION

This lesson is designed to help students articulate their own feelings about certain injustices, identify various sources for our ideas and feelings about justice, and recognize that the Preamble to the Constitution and several amendments are another source of our values regarding justice. By participating in this lesson, students will make the connection between their own beliefs about what is right and just and the many different sources for their beliefs. Students need to understand that our United States Constitution is one of these sources and that our Constitution can be amended to reflect new beliefs of people in our country.

AUDIENCE

Fourth through seventh grade

TIME TO COMPLETE

Three class periods

GOAL

As a result of this lesson, students will:

- learn that their beliefs about conduct that is right or just have many sources, including the United States Constitution and the amendments to the Constitution
- describe what makes a situation unjust and identify their feelings about that injustice
- list possible sources of their own beliefs about rightness and justice
- become familiar with several parts of the Constitution which deal with justice
- describe the injustices several amendments were meant to correct

MATERIALS

Five or more copies of the United States Constitution, newsprint, markers.

Handout 1: Mini-drama, Voting Rights
Handout 2: Mini-drama, A Letter to the Editor

PROCEDURES

1. Students should be randomly selected to read the parts in the two mini-dramas. (The mini-dramas follow)
2. Make enough copies of each mini-drama for each student with a role to have a copy.
3. Ask the two casts to go to different places and practice their roles.
4. With the remaining students conduct a discussion about their feelings about not being selected to be in the dramas. Was it just that they were not selected, etc. This will help to focus their attention on what is just or unjust.
5. Call the groups together and have the mini-drama on Voting presented with the rest of the class as audience. When the mini-drama is over, ask all the students to help identify the specific parts of the mini-drama that seem to be unjust. List these parts on large newsprint and be sure to save these, as they will be needed another day.
6. For each unjust part identified have the students describe what it was that made the situation unjust. Write the ideas below the identified part. Some possible ideas to focus on might be that not all were treated the same, some had rights while some did not, and some seemed to be victims of discrimination.
7. After these have been listed, have the students make feeling statements about the injustice that occurred. List all feeling statements on the newsprint below the described injustice. Then ask the following questions:
   1. Did everyone feel the same about the situations?
   2. Why do you think there were different feelings about the same situations?
8. When the students have finished their comments, move on to the mini-drama about the Letter to the Editor. Follow the same procedure you followed for the mini-drama on Voting.
9. Have students meet in small groups of 4 or 5 and have each group make a list of the

people whose job it is to tell other people what they may and may not do. Some possible suggestions are: parent, police, teacher, minister, priest, rabbi, judge, crossing guard, principal, cafeteria worker, referee, umpire, coach.

10. Ask the students to identify the people they selected and write each new job on the newsprint. Working with the whole class, take each job identified, and write next to the job the authority the person doing the job uses to decide what people may and may not do. Some possible authorities are the Bible, church laws, state and federal laws, town laws, school rules, home rules, sport rules, and community beliefs.
11. When you have a sufficient amount of jobs and their authority, put up the newsprint with answers to the mini-drama on Voting. Ask the students to identify what authorities they used to decide whether a situation was wrong or unjust. Write that authority on the newsprint. Try to help the students see that there was a possibility that some of them used the amendments to the Constitution as an authority.
12. Use the same procedure for the mini-drama on the Letter to the Editor.
13. Put up the newsprint answers to the mini-drama on Voting. Have a student read aloud the Preamble to the Constitution. Ask students to suggest some reasons why the phrase "establish justice" was included in the Preamble. (Make sure students recognize its centrality in the Preamble and thus its importance to the writers.)
14. Ask students if they know which amendments to the Constitution deal with voting rights. Have them read Amendment 19 and inform them this was passed in 1920 and was meant to give women the right to vote. Ask them what their responses are to it being passed in 1920. Compare these responses to some of their responses to the injustices in the mini-drama on Voting. Some possible follow-up issues might be: Why might women have been excluded from voting? Were they the only group excluded at the time the Constitution was written? Why didn't their goal of establishing justice apply to women and slaves? What might the women have felt? What might the slaves have felt? Do they think the voting laws are just today?
15. When these issues have been explored for about one-third of the period, put up the newsprint responses to the mini-drama on the Letter to the Editor. Ask students if they know which amendment deals with freedom of speech and freedom of the press. Have a student read Amendment 1. Point out that people are guaranteed the freedom to write and say what they believe and that arrests for writing what you believe are illegal.

    Focus on four questions with the students.
    1. Why do you think it was important to the writers of the Constitution to have freedom of the press and freedom of speech?
    2. How would the students feel if these rights were suddenly taken away?
    3. How would the absence of these rights change the behaviors of the students and their parents?
    4. Can they think of anything they might do to get the rights back?
16. A wrap-up on the exercise should include helping the students to be aware that many of the injustices took a very long time to correct and that the injustices were corrected because of people's values changing and through the resulting political pressure. However, the students should be aware that their own values regarding free speech and voting have been shaped by the more recent changes and that their values are basically the same as those expressed in the current amendments.

EVALUATION

Have students work on this evaluation individually at the end of the third lesson. Respond in writing to the following questions.

1. Earlier in our country's history some states charged a poll tax of up to $500 to any person who wanted to register to vote in a state or national election. Tell why you consider this a just or an unjust practice.
2. What authority helped you decide whether this was just or unjust?
3. What would be your feelings about this practice if it happened to your parents?
4. Name some of the people in positions of authority who might have wanted to end the practice of charging a poll tax.
5. What amendment to the Constitution deals with this issue? Look this up in the Constitution if you don't know.

TIPS FROM THE TEACHER

Materials produced by the Cleveland Public School Center for Law-Related Education are a great help. Materials on all phases of law-related education are available by writing the Center at Emile de Sauze School, Room 216, 4747 E. 176th Street, Cleveland, Ohio 44128.

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HANDOUT 1

MINI DRAMA-VOTING RIGHTS

The setting is a classroom with the students getting set to select a Student Council Representative.

TEACHER: "It's time now for our voting for Student Council Representative."

JACK: "I nominate Jim."

TEACHER: "Since you can't vote you can't nominate Jim."

JULIE: "I nominate Ruth. She is interested in the job and she knows everyone in the class well."

JIM: "I nominate Jack."

TEACHER: "Just ignore that nomination class. Jim is not eligible to vote so he can't nominate anyone."

SHERRY: "Who wants boys on Student Council anyway. I nominate Julie."

TEACHER: "We have two candidates, Julie and Ruth. Will all girls in the class vote please. Ruth received the most votes and is our Student Council Representative."

HANDOUT 2

MINI-DRAMA—A LETTER TO THE EDITOR

The setting is Jeff's house after school. Rene and Sam are sitting on the front porch talking to Jeff.

RENE: "I really liked what you wrote in your letter to the editor of the *News* Jeff."

JEFF: "Thanks. I spent a lot of time writing and rewriting what I wanted to say."

SAM: "What did you say? I haven't read the letter yet."

JEFF: "I told how upset I was about the amount of power the CIA has to get information about private citizens."

SAM: "Do you think it was wise to write that in a letter to the editor? You could get in deep trouble with the CIA."

RENE: "He is just writing what he believes."

SAM: "Still, I don't think it was such a hot idea."

(Ten minutes later two people get out of a car across the street and walk to the porch where the three are sitting.)

MR. MILLER: "Does Jeff Cole live here?"

JEFF: "I'm Jeff Cole. What can I do for you?"

MR. SANFORD: "You are to come with us. Your letter to the editor upset many people."

JEFF: "You can't do this. I just wrote what I believe is true."

MR. MILLER: "You can believe anything you want. Your mistake was writing it. Come with us."

Japanese-American Internment: American Concentration Camp or Reasonable Response to National Security?

Dale Robbins

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INTRODUCTION

This lesson is intended to motivate the student to evaluate the U.S. government action in the case of the Japanese-American internment and decide whether the government acted properly within its constitutionally defined powers. The Korematsu case and constitutional issues of equal protection are examined.

AUDIENCE

Senior high school American history students

TIME TO COMPLETE

This lesson will take two to three days to complete

GOALS

As a result of this lesson, students will:

- learn the affected geographical areas and the people involved in the relocation experience
- be able to distinguish between the practical, social, legal, and moral standards imposed by the government and the American people
- decide which specific sections and provisions of the Constitution address the rights of the individuals in this case and the right of the government to respond as it did.

MATERIALS

Handout 1, Background
Handout 2, Excerpts from the Supreme Court Decision, *Korematsu v. United States*

PROCEDURES

Day One

1. Ask the students to consider that a group has been attacking teenagers in the local community for the previous month. The local authorities have not been able to halt this activity or identify and apprehend the perpetrators. Finally, the authorities have resolved to gather up all teenagers in the area and bus them to a government holding facility in another state until the guilty attackers can be brought to justice. Inform the class that males and females will be separated and the teenagers can take with them only several change of clothes. Ask them to react and respond to this situation.
2. Questions to stimulate discussion.

   Would this solution work? Why or why not?

   What would be the worst thing about this situation?

   What questions would they want to ask the authorities about this demand that they be removed from their homes and schools?

   What would they miss most about home if they were forced to leave?

   Could the teenagers be forced to leave if they did not want to go?

   What would be the more practical solution to this problem?
3. Write the term "protective custody" on the board and tell the class that is what we have been talking about. Ask the class if they think the government has ever taken a similar action for that reason on any group.
4. A student is likely to mention the Japanese-American relocation experience from World War II.

   If so, develop the discussion by asking from whom or what were the Japanese-Americans being protected when they were relocated? Was protective custody an issue? Also ask what other reasons were there for the relocation order. Elaborate on possible ways the Japanese-Americans were "security risks" after the attack on Pearl Harbor.

After the above discussion or if no one mentions the internment experience, allow the students to read HANDOUT #1.

5. After the students have read the handout, review the facts by asking the following questions:

   How many people were "relocated"?

   Who gave the order?

   Where were the "relocation camps" located?

   From what areas of the United States were the Japanese-Americans taken?

   What options were the internment camp victims given from the camps? Ask the students which of these options do they think they would have taken.

   What were the property losses? Was there any compensation by the government?

   What are the differences between teenagers being removed from our local community for the reasons stated at the beginning and the Japanese-Americans being removed from the Pacific Coast? What are the similarities?

   Finish the discussion by asking the following:

   What is more important—national security or the rights of individuals?
6. If time allows, have various students read aloud to the class the reactions to the Japanese-American internment found on HANDOUT #2. If necessary, this assignment can be done for homework.
7. As a follow-up to HANDOUT #2, be sure to elaborate on the selection that focuses on "protective custody" as a justification for the internment. This will remind students of the opening activity-discussion which had made them the "relocation victims." Was the Fourteenth Amendment "equal protection clause" an issue?
8. Briefly introduce to the class the Supreme Court case, *Korematsu v. United States* (1944). Mention Fred Korematsu's objection to not being able to take his American girlfriend with him. Ask the class to consider whether the government should have allowed him to take his girlfriend to the camp.

   Divide the class into three groups of eight to ten students each.

   Group One: Legal advisors to Fred Korematsu.

   Group Two: Legal advisors to the United States government.

   Group Three: The Supreme Court of the United States.

Homework For Day One

Group One will write down five to ten legal arguments for Fred Korematsu and use the section of their textbook containing the Constitution to find reasons and justifications for their arguments.

Group Two will do the same as above except that their arguments will be for the government.

Group Three will write down five arguments for Korematsu and five for the government and will use the Constitution as a reference to justify all arguments.

Day Two

1. Have each of the three groups meet for five to ten minutes, using their written arguments as a basis for discussion that will establish their legal case to be presented to the Supreme Court. The group representing the Supreme Court should meet at the front of the classroom and discuss the pros and cons of both sides of the case.

   The group which represents the Supreme Court is preparing to hear the *oral arguments* of each legal team once they have met and prepared their case.

   Each legal team should be informed that they must choose one of their members to present their *oral arguments* to the Supreme Court once their case is prepared.

   Put a lecturn in the middle of the room between the two circles of desks where the legal teams are meeting. The lecturn should be facing the 8 to 10 desks in the front of the room where the Supreme Court "justices" will sit.
2. Explain to the class that normally those presenting oral arguments to the Supreme Court are allowed exactly 30 minutes to present their case. But in this instance each group will be allowed ten minutes to present their oral arguments to the Court.
3. The Court will be allowed to leave the room and convene for five minutes after hearing the oral arguments from both teams. This should be sufficient time to reach a decision since the Court met before the arguments to discuss the pros and cons of both sides. After voting, the Court will render a decision to the class with one member of the majority giving the reasons for the decision.

   If desired, a minority opinion may be allowed from those "justices" dissenting from the majority.

4. Finally, have the class read excerpts from the real majority and minority opinions from *Korematsu v. United States* (1944) contained on HANDOUT #2.
5. Finish *Day Two* by focusing again on the questions:

   What is more important—national security or the rights of individuals?

   Should the Japanese-Americans have been removed?

EVALUATION

The teacher should walk around the room during *Day Two* taking note of student participation within each group. The teacher might want to take up the homework completed between the two days of the lesson. The teacher might require each group to submit a formal written argument or as in the case with the Court, a formal written majority and minority opinion.

Each group, at the end of the lesson, might prepare together a political cartoon or other drawing on poster paper representing some aspect of their legal argument or presentation.

Another motivational technique might be to have each student prepare a list of personal items he or she would want to take if they were being relocated.

This lesson could easily be adapted to fit three or more class periods.

TIPS FROM THE TEACHER

For more information, you might want to contact one of the internment camp victims who has spoken to various groups, including the SPICE II Institute participants, about the experience.

Mariagnes Uenishi Medrud
3155 Stanford Avenue
Boulder, Colorado 80303

Also, you might check your local video rental store or keep a watch on local television listings for a viewing of the "T.V. Movie" done several years ago entitled *Farewell to Manzanar.*

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Irons, Peter. *Justice at War.* New York: Oxford University Press, New York, 1983.

Kitano, H. L. *Japanese Americans.* New Jersey: Prentice-Hall, Inc., Englewood Cliffs, 1969.

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For primary source materials, including songs, sketches, poems and quotations, by the Japanese-Americans affected by the relocation experience, the teacher should see: *Executive Order 9066* by Maisie Richard Conrat (published by MIT Press, 1972).

HANDOUT 1

BACKGROUND

The attack on Pearl Harbor brought the direct and formal entry of the United States into World War II. That same attack also signaled a sudden emergence of fear and persecution toward Americans of Japanese decent. People living on the West Coast feared that their homes might be included in the target for the next attack by Japan. 112,000 Japanese-Americans lived on the West Coast.

An executive order by President Franklin Roosevelt allowed the military, under the direction of General John DeWitt, to remove all persons on the West Coast considered to be security risks. All persons of Japanese ancestry were ordered to evacuate their homes on the West Coast. There was no similar order for 700,000 Italian-Americans, 300,000 German-Americans, and the 35,000 Japanese aliens living in Hawaii.

The Japanese-Americans were removed to the interior of the country in various western states as well as areas in Alabama and Arkansas. Military barrack type housing provided shelter for those evacuees, as loyalty investigations were conducted.

Most of the Japanese-Americans were determined to be loyal but they were not allowed to return to their former homes. They had already been forced to liquidate their property and business holdings. They were given three options: move to the interior of the country, join the army or remain where they were in the relocation camps. Most stayed in the camps. Approximately 36,000 chose to resettle or join the army. The United States government later paid 35 million dollars to compensate the Japanese-Americans for their losses. Estimates put their actual losses far in excess of this compensation figure.

Did the United States government violate the civil rights of these Japanese-Americans? Was the military urgency of this situation a justifiable reason for the security measures taken? Can the government take any security measures it deems necessary during wartime no matter how abhorrent they might be to individual liberties?

HANDOUT 2

Excerpts from the Supreme Court Decision,
Korematsu v. United States,
323 U.S. 214 (1944)

It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition toward the United States. Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. . . . We are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue.

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily . . . the military authorities considered that the need for action was great, and time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified.

Majority Opinion (Justice Hugo Black)

This exclusion of "all persons of Japanese ancestry, both alien and non-alien," from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not be approved. Such exclusion goes over "the very brink of constitutional power" and falls into the ugly abyss of racism . . .

It must be conceded that the military and naval situation in the spring of 1942 was such as to generate a very real fear of invasion of the Pacific Coast, accompanied by fears of sabotage and espionage in that area: The military command was therefore justified in adopting all reasonable means necessary to combat these dangers. In adjudging the military action taken in light of the then apparent dangers, we must not erect too high or too meticulous standards; it is necessary only that the action have some reasonable relation to the removal of the dangers of invasion, sabotage and espionage.

But the exclusion, either temporarily or permanently, of all persons with Japanese blood in their veins has no such reasonable relation. And that relation is lacking because the exclusion order necessarily must rely for its reasonableness upon the assumption that *all* persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage . . . .

No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry. . . . It is asserted merely that the loyalties of this group "were unknown and time was of the essence." Yet nearly four months elapsed after Pearl Harbor before the first exclusion order was issued; nearly eight months went by until the last order was issued; and the last of these "subversive" persons was not actually removed until almost eleven months had elapsed. Leisure and deliberation seem to have been more of the essence than speed. . . . It seems incredible that under these circumstances it would have been impossible to hold loyalty hearings for the mere 112,000 persons involved—or at least for the 70,000 American citizens—especially when a large part of this number represented children and elderly men and women. Any inconvenience that may have accompanied an attempt to conform to procedural due process cannot be said to justify violations of constitutional rights of individuals.

Minority Opinion (Justice Frank Murphy)

A Meeting of Minds In Search of the Common Law

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INTRODUCTION

To find meaning in a constitutional system that is based on the dynamic principles of common law requires that we take into account the ideas of the people and the times that have molded their views. In this lesson, students will assemble as some of the great minds that have influenced the creation and evolution of the United States Constitution. This meeting of minds will take place with the following goals:

First, to become familiar with the theoretical principles behind the Constitution. Students will assume the characters of Enlightenment thinkers including Locke, Rousseau, and Montesquieu.

Second, to consider the lives and actions of the founders themselves as they ventured to put theory into practice. In which words, if any, were these men trying to convey an "original intent," and, if so, what was it and what is the nature of our obligation to uphold it? Students will interact with the figures of Madison, Hamilton, Jefferson, et al.

Third, to evaluate whether the vision has changed over time. Through analysis of key precedents and opinions, students will ask noted personalities like Earl Warren or Abraham Lincoln whether the "intent" has been perverted or preserved.

As adjuncts to this initial role-playing phase, *A Meeting of Minds* will enable the teacher to utilize the concept in a variety of ways. First, it establishes a framework that may be used as a one-time lesson, or that can be "invoked" at any time during the remainder of a course. Second, it creates a unique vantage point for the law or history teacher to analyze court decisions OR for the humanities teacher to "consider" disputes raised by literature or art. It also describes a novel strategy that ANY teacher can employ to increase the quality of student participation in class discussion.

What all these methods have in common is that they strive to develop a better understanding of American constitutional history—its procedures as well as the assumptions upon which it rests—leading to an appreciation of the role of individuals in the shaping of common law. The common law normally refers to a system in which decisions are handed down by judges, creating certain norms of judicial behavior. *Stare decisis*—a system of law in which judges rely on precedent to ensure continuity and stability, but in which they may also change their opinions over time, is a dynamic concept. And whether one subscribes to the belief that the duty of courts is to mirror the current attitudes of the general public, or that it exists as a sovereign repository of the collective will, capable of setting policy and "legislating morality," few would argue that court decisions have a profound impact on the way we live. An understanding of the social, political, and moral issues of our time helps to insure an obedient populace able to comprehend the common law and also to engender an informed citizenry able to communicate their values to those who will shape it.

The American judicial system provides an ideal access point to these issues as it is in the business of arbitrating disputes and creating dialogue over them. Part of dealing with these issues certainly depends on an understanding of the system itself, that is, the nature of dialogue and of ways that decisions come about. This, in turn, requires first that we trace their evolution through time and space, learning to appreciate the context in which they *have been* and *are being* made and to predict the potential circumstances in which they *will be* made in the future.

This lesson attempts to accomplish that awareness by helping students gain a sense of ownership over the common law and become participants in their own learning. It seeks to create an "extended definition" of the common law, one in which the norms we create are subject to the scrutiny of every citizen. In so doing, perhaps our students will have a better appreciation of the heritage of the world in which they find themselves.

AUDIENCE

High School Law, Humanities, Literature or History courses.

TIME TO COMPLETE

One day to two weeks.

MATERIALS

Sources of biographic information

Sources of famous quotations

Timelines of significant decisions/events in history

Construction paper, markers, tagboard

Regular content materials from any course in history, law, literature

GOALS

As a result of this lesson, students will:

- employ inter-disciplinary strategies to motivate them and introduce them to the study of constitutional law.
- transfer learning among disciplines—history, as students come to recognize the importance of the context in which decisions are made; psychology, as they discover the role played by personality in shaping legal precedents; and the fine arts, as they become sensitive to art as an expression of social values and human conflict.
- develop an awareness of the relationship between beliefs and action, that is, between theoretical principles and their application in practice.
- to learn to question what set(s) of assumptions and procedures we should decide to employ in the service of human action, especially given the context of a situation.
- learn how to apply our assumptions and procedures once decided upon in order to marshall our beliefs in the pursuit of individual or collective human goals.
- practice the skills of critical thinking, especially as they serve as an access into and contribute to a better understanding of the content of the course and as models for student writing, discussion, and participation.
- practice the skills of making reasoned judgments about literature, historical decisions, and personal or social problems—judgments that are based on the appropriate use of evidence, recognition of claims and arguments, and careful attention to the processes of reason.

PROCEDURES

Anticipatory Set

Student interest should be piqued through the use of any number of "hooks" designed to place the class in a realistic situation involving a real constitutional question. See lessons by Rod Hanson and Ken Link as examples of how to initiate discussion about original intent, inalienable rights, the "meaning" of the constitution, and so forth.

Also, the teacher may wish to guide students through a series of tasks including discussion about the purpose of government and the role of the state in a democratic society, or that introduce the role theory plays in putting answers to such questions into practice. Some ideas:

- — read a Federalist Paper and analyze it for the degree of THEORETICAL as opposed to PRACTICAL content.
- — look for premises that sound "American" or "non-American" in the teachings of Aristotle (an excellent source is Mortimer Adler's *Aristotle for Everybody*)
- — ask students to draft a "mini-treatise" which attempts to describe the theory behind the practical set of rules handed down by Hammurabi
- — ask students to draft a "mini-constitution" or set of practical rules based on theory as articulated in an excerpt from Rousseau's *Social Contract.*

Once the teacher is satisfied that the students understand the role of theory in deciding how society or government operates, they are ready to begin the simulation.

1. Each member of the class will select a person from the list below and do enough research to construct a "profile" of this person. They will later be asked to "become" that person in class seminars. Have students peruse resources such as those in the bibliography with the objective of preparing a "portfolio" containing the following:
   a. a picture of the person.
   b. a sketch of the state or country he is from, along with key dates, personal and professional data.
   c. at least FIVE quotations of the person that best reflect his character and beliefs (political, religious, legal, moral)
   d. a brief introduction that a classmate will read to introduce the person to the rest of the class.
   e. a timeline indicating the most important decisions, major works or contributions made by the person, and a summary of the context or reasons surrounding each.
   f. at least three predictions of where this person would stand and why, on issues of modern concern. (These may be hypotheticals pre-determined by the teacher, such as abortion, death penalty, right to privacy.)

EXAMPLES OF CHARACTERS TO ROLE-PLAY

Enlightenment
Locke
Rousseau
Blackstone
Montesquieu
Hobbes

Practitioners
Marshall
Brandeis
Warren
Frankfurter
Edwin Meese
Lincoln
Roosevelt
Nixon
Reagan

Founders (or thereabouts)
Madison
Hamilton
Sherman
Franklin
Washington
Jefferson

Others (for contrast, flavor, and fun)
Marx or Lenin
John Stuart Mill
George Orwell
Thoreau or Emerson
Gandhi or King
Machiavelli
Plato or Aristotle
Francis Bacon
Martin Luther

2. After the profiles are complete, members are introduced as the characters they will play, and they make general comments about American Constitutional Law and about their character's stand on certain selected issues.
3. Check for understanding: It is wise at this point to reinforce student roles and make sure students are comfortable with and knowledgable about their character. Any contemporary debate which lends itself to a pro/con analysis would serve to check student understanding. For example, they might be asked to prepare a position statement regarding an individual's right to smoke in a public place. Or the class might be given two different interpretations of the "correct" meaning of the second amendment and be asked which view their character would most likely have favored. At this point, teachers may begin the substantive portion of the unit (or course, if this forum is to be used all year) in one of several ways depending on the objectives of the teacher, course content, and the best learning style of a particular class. Each of these techniques could be employed independent of the rest of the lesson.

Alternative A.
Constitutional Law or History Classes

Keeping within the roles, students review the facts or opinions of historical cases relevant to the Constitution. Oral arguments are presented by distinguished members of the group, who then discuss and decide their outcome as members of a judicial body.

Example: Earl Warren and Edwin Meese present arguments on the case of University of California v. Bakke. The rest of the class serves as Supreme Court, listening and offering questions, and later debates the possible outcome. Following an opportunity for individuals to draft written opinions, the class researches (or Mr. Justice Powell himself perhaps delivers) what was the actual opinion of the court in 1978. Be sure to consider DISSENTING opinions!

Check for understanding: Ask students to decide which character's opinion they most closely align themselves with personally. They should explore the assumptions underlying this position, clarify the implications of holding to such a decision, explain reasons for their beliefs, and consider the context in which the original decision was made.

Alternative B. *Humanities or Literature Classes*

In this lesson, the class will participate in the trial of some noteworthy person from history or literature. Assuming that they have encountered and identified as such a situation in their study that created an "adjudicable dispute" of sorts:

1. Clarify the issue—that is, who should be "tried" and what is the offense? If Socratic dialogue does not result in a class consensus about what is at issue, you may consider the use of a grand jury or "pre-trial" hearing in which designated sides present initial arguments and a decision is made (indictment issued) as to who will be the defendant and what is the "crime" or question of law.
2. Have the class determine who from the pool of great minds is the best qualified "counsel" to represent the opposing points of view in the trial. Also, what type of case will it be—civil or criminal, constitutional or ethical, before an appellate body or in a trial court with a jury?
3. Assign student roles. In addition to the lawyers (research assistants are helpful as well), students become defendant, plaintiff, and witness (in the case of a jury trial) or members of a "Supreme" Court (if the question involves "civil liberties" or "natural rights"). Other students may be assigned roles as reporters, who also must research the backgrounds of the attorneys, speculate, report, and editorialize about the nature and projected outcome of the case and so on.
4. Conduct a pre-trial conference in which judges and attorneys agree upon the "rules" of the game. How will the trial be conducted?

Will there be a jury, opening statements, time limitations? Who has the ultimate authority to "decide" the case, and on what criteria (precedent, preponderance of evidence, beyond a reasonable doubt, chance for appeal)? What do we agree in advance is to happen to the loser/winner?

5. Perform the trial and arrive at a decision as per the rules.

Example: Reading—*Antigone* by Sophocles

Possible Defendants:	Antigone (disobedience to state law; fomenting rebellion)
	Creon (abuse of power, denial of "unalienable rights")
	Haemon (murder, suicide, disobedience to parental authority)
	Greek tradition (the "Gods" or institutions that promote "laws" resulting in Antigone's dilemma)
Possible Counsel:	James Madison v. Alexander Hamilton Martin Luther v. Niccolo Machiavelli Henry David Thoreau v. John Locke

Check for understanding: This creates an excellent opportunity to review or build upon past lessons or content. For example, the character from one story may become the person who will adjudicate a confrontation between characters from another story. Historical figures from one era may be asked to impose their reasoning on an issue being faced in another era. Or you may combine history with literature or fine arts. Law students flaunt their legal expertise if offered the chance to try Boo Radley from *To Kill A Mockingbird*. Young people are skilled at juxtaposing the debate from *Inherit the Wind* (the debate at the Scopes trial between evolution versus creation, 1927) into the modern arena and prepare arguments on the teaching of secular humanism or the separation of church and state. Even if you have not already identified students as famous persons in your class, this activity can be triggered any time during your course by assigning roles for that single purpose or by adding roles as you go along.

Alternative C. *Any Class*

For teachers who wish to stimulate dialogue without the formalities or preparation time of these activities, Dr. Zachary Seech of Palomar College has authored a wonderful discussion technique which he calls "Philosophical Chairs." In this exercise, two rows of chairs are set up, each row facing the other, with a third one at one end perpendicular to them. A topic which is likely to elicit divergent responses is stated as a claim or question to the class. Students are then asked to seat themselves on alternate sides of the room depending upon their initial reaction to the statement. The "pro" side offers an argument in support of the statement, someone from the "con" side states reasons in rebuttal, and so on. (A student discussion leader and ground rules regulating how often and how long a person may speak is helpful with younger students). The third row is reserved for those who are torn between arguments, lack information, or are uncomfortable with the discussion format.

Examples:

	undecided or . . .	
No	The search conducted by school officials in TLO v. New Jersey was unreasonable under the 4th Amendment	Yes
	undecided or . . .	
No	It is ethically justified for the government in certain instances to deliberately "disinform" the press and public	Yes

Any time a student hears evidence which inclines him to change his mind, he may freely move to another seat, either on the opposite side or in the undecided section. There is no limit to how many times you can change your mind, and hence your "philosophical chair." Large numbers of students get involved and feel that they have made a worthy contribution to the class. It encourages active listening, gets kids to weigh evidence, and sharpens skills in critical thinking. These simple rules may help in getting started:

1. you must listen carefully to each speaker
2. you must speak at least once
3. you may speak only when called upon by the discussion leader (for more mature audiences, the rules of common courtesy apply)

The discussions are always energetic, often heated, and most successful when the teacher participates as an "equal" voice.

Check for understanding: This method is ideally suited for "A Meeting of Minds." It can be used to assess the initial position of each character on various issues at the beginning of the unit. It is a great way to introduce new topics, review arguments prior to an exam (or as part of the exam itself) or as an enrichment activity to reinforce the personalities of the role players. It might best serve to allow students to step *out* of their roles and articulate their own points of view at the culmination of the unit or topic.

A student in character may be able to qualify his opinion by citing relevant evidence from his own time period that might have influenced his decision (such as, "In my day I wouldn't have agreed to

____________________ because of its implications for ____________________, so I don't see how I could go along with a decision that would allow ____________________.").

Also, a tape recorded or scripted version of the discussion might yield a chance to explore why the argument took a particular turn when it did, allow students to re-examine compelling arguments on another side of the issue and so on.

EVALUATION

Each of the procedures affords opportunities to raise the level of concern in a class through the use of vital and interesting topics—issues of privacy, personal freedom, use and abuse of power, and so on. The sensitive teacher is also able to monitor student success and adjust the strategy throughout the research phase by evaluating contributions during oral seminars, and through the use of periodic written assignments. Some suggestions for providing closure in a creative way include:

1. Each student prepares a written opinion summarizing reasons from either the *majority* (winning point of view), *concurring* (agree but for different reasons), or *dissenting* point of view (disagree with outcome and reasoning of the decision).
2. Students prepare a written dialogue between the central characters in the trial or some topic relevant to the issue at hand (e.g., "Are school principals agents of the state or in loco parentis?" or "What are the limits to presidential authority in waging war?").
3. Students prepare the closing statement as one or both of the lawyers would give it at the conclusion of the case. You may want to confront them with a set of hypothetical facts or ask them to speak from the view of a character who has been studied previously, and ask them to apply similar reasoning in a new situation or find the reason that the precedent from the original case doesn't apply.

TIPS FROM THE TEACHER

I like to end this unit by asking the class to respond (both in and out of their character) to one final hypothetical scenario which involves an issue that has yet to be thoroughly tested in the courts. This predictive element not only gets them to stretch beyond questions that have already been answered, but insures that their learning will extend beyond my class, since they may recall the exercise later when a similar case is actually decided. For example, this year's final exam dealt with the rights of surrogate mothers (see appendix). The idea of this lesson may be employed as an on-going strategy throughout an entire course of study.

BIBLIOGRAPHY AND RESOURCES

The article by Zachary Seech entitled "Philosophical Chairs: A Format for Classroom Discussion" is in *Teaching Philosophy*, published at the University of Cincinnati, January, 1984, pp. 37-41. His ideas are used with permission from the author.

In preparing students to assume the roles of historical persons, several single-volume quotation and biographical encyclopedias were helpful, but most notably:

The Great Thoughts, compiled by George Seldes, Ballantine Books, 1985.

The Morrow Book of Quotations in American History, compiled by Joseph R. Conlin, William Morrow and Company, Inc., 1984.

Current Biography, multi-volume yearbook series, 1943-present, H. W. Wilson Co.

Dictionary of American Biography, Charles Scribner's Sons, 1964 (multi-volume).

McGraw-Hill Encyclopedia of World Biography, multi-volume series, 1973.

20th Century Culture, A Biographical Companion, Bullock and Woodings, Harper and Row, 1983.

Encyclopedia of American Biography, Garraty, Harper and Row, 1974.

In selecting topics to consider, I relied on several easy-to-use and comprehensive resources which provided summaries of leading Supreme Court cases:

UPDATE On Law-Related Education, a periodical published by the American Bar Association.

The Teacher Resource Books from:

American Government, Principles and Practices, by Turner, Switzer and Redden, Merrill Publishing Co., 1987.

Magruder's American Government, by McClenghan, Allyn & Bacon, 1987.

The main text, which provides an excellent view of cases within their historical context, was used in conjunction with the PBS series by the same title:

The Constitution, That Delicate Balance, by Fred Friendly, Random House, 1984.

For students who wished to consult either original sources of some of the philosophers, or look at the actual text of supreme court opinions, I had on hand Constitutional Law Casebooks (Lockhart and Rotunda with supplements) published by West, St. Paul, Minn., and these two reference sources in the library:

The Harvard Classics, P. F. Collier and Son, New York, 1909.

Great Books of the Western World, Encyclopedia Britannica, Inc., 1952.

EPILOGUE

Students far prefer to be involved in offering their own opinion rather than merely accepting someone else's pre-digested "facts." The transition from "mere opinion" to "reasoned judgment" is a rewarding one so long as students are encouraged every step of the way and constantly reminded that this is not just another academic exercise in futility, but a skill in analysis and evaluation that requires risk, creativity, and a feel for both the aesthetic and the scientific, all of which are worthwhile skills in or out of school. This unit provides a vehicle for students to explore what is right and reasonable while still learning the "content" of American Constitutional history.

As an interdisciplinary concept, the unit may proceed in any one of infinite directions. Once students are into the role-playing mode, it becomes appropriate to interject among these activities other lessons that are relevant to America's constitutional history. Characters may be asked to report on their handling of political or legal crises of the past. Cases such as Marbury v. Madison or the Prize Cases may become part of the daily fare of the course, with the actual decision-makers available for comment on their outcome. Any and all constitutional issues become fair game for these personalities, and for variety, roles can be switched, elections held, and new stock brought in (additional research at a later date), or students can revert to "normal" status without a disruption to either the content or skills objectives of the course.

In my view, the main objective of any unit should be the rigorous examination and formulation of one's own beliefs and actions, as well as the ability to make sound, informed decisions and solve problems in a wise and discretionary manner. It is intended that exploring the lives, beliefs, and decisions of some of these great minds, and relating the exploration to the context in which all of us find ourselves participants in the common law, has been one vehicle by which that ideal will come about.

APPENDIX
CONSTITUTIONAL LAW
PRIVACY

Part I

The notion of privacy has always been an ethical concern in society. For the past century, it has taken on a whole new legal dimension in American Constitutional law. Where has the notion of privacy come from? Discuss in an introductory essay what are some of the factors that have contributed to the modern legal concept of "privacy." Your essay should comment briefly on each of the following components of the issue:

1. The parts of the Constitution that have been cited when making reference to the idea of the right to privacy.
2. The conditions in society (legal, scientific, educational, et al.) that have given rise to the need to define rights to privacy.
3. The way in which the right to privacy has been "balanced" against the interests of society.

Part II

Below are the facts of a hypothetical case. Assume you are asked to write the majority opinion of the Supreme Court. It is not necessary that you cite cases by name and number; however, we have had seminars on many issues related to the general notion of privacy, and, in a general sense, you should rely on the precedents that have been established in order to support your decision. Among the areas that have yielded precedents that we have studied and that might be helpful are abortion, anti-sodomy laws, academic freedom, euthanasia, search and seizure, right to counsel in situations where privacy may or may not be expected, school policies, and all the topics covered by individual reports (lie detectors, computer technology, drug testing, etc.)

Connie Tract, 21 years old, is an unmarried woman who signed an agreement, witnessed and attested to by attorneys representing both parties. The agreement stated that Miss Tract would be artificially impregnated and carry to term the child of another couple, Mr. and Mrs. Surry Gut. There is a state law which authorizes such activity, and in full accordance with the law, the implantation was performed and the baby was born. Miss Tract has sued for possession of the baby; in her suit, she argues that she could not have known what her feelings would be at the time of birth, namely that she would not be able to give up the baby and that the state law allowing such practices is unconstitutional; she concludes that, therefore, the contract is invalid, and she should be allowed to keep the child.

You are being asked to rule on the constitutionality of the state law, and whether or not the Guts are entitled to the baby, or if Tract is entitled. You should fill in any facts that are not included here to suit your opinion.

Part III

Finally, the last 10 points are on me if you will give an honest appraisal of this course for me. Tell me what was good, bad, fair, or unfair, when you felt comfortable or uncomfortable, and, in general, whether you think it is worth it for me to continue to sink my soul and existence into a pursuit such as this. As for you, you have been as magnificent a class as I have ever encountered. These weeks have been an experience that I will treasure for the rest of my career.

Who Really Wrote the Constitution?

Linda Smith

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INTRODUCTION

Even though our Constitution was an experiment in government, students should understand that many of the ideas incorporated were not "new." They came from the 18th century philosophers and were rethought by our Founding Fathers. This lesson is a research project in which students will examine the ideas of the European philosophers to see how these ideas were translated by our Founding Fathers into the basic principles of our constitutional democracy. This lesson can be incorporated into a world history unit on the enlightenment, or a history unit on the Constitution, or a government unit on the writing of the Constitution.

AUDIENCE

High School students in world history, American history, or government classes

TIME TO COMPLETE

One to two weeks

GOALS

As a result of this lesson, students will:

- identify the European philosophies and the ideas they contributed to our Constitution
- identify the major American contributors to the United States Constitution
- compare old and new world political thought

MATERIALS

Handout 1:	Investigation List
Handout 2:	Chart of Philosophical Ideas
Handout 3:	Major Contributors to the United States Constitution
Handout 4:	Where Ideas are Found in the Constitution

PROCEDURES

1. The class can be divided either into two groups (Europeans and Americans) or into three groups (Europeans, Americans, and concepts.
2. Explain to the class exactly what they are expected to find out in their research. (Expectations may vary from a very formal research paper to a simple chart completion, depending on the wishes of the individual teacher and the ability of the class).
3. Each group is given Handout 1, Investigation List, and selects a topic for research.
4. Discuss with the class as a whole the major principles of democracy as laid out in our Constitution.
5. After students have investigated their assigned topic, have them share their findings with the rest of the class.
6. Students should now be able to complete the chart in Handout 2, Chart of Philosophical Ideas.
7. As an extra activity students might cite examples of each of their principles of democracy from the Constitution—see Handout 3 and 4.

EVALUATION

1. Investgation reports
2. Written test on material studied

TIPS FROM THE TEACHER

This could be turned into a joint project among U.S. History, World History and Government classes that could culminate in a debate among the classes. Each class could put forth the following points of view:

1. World History—the major ideas on democratic principles used in the U.S. Constitution came from Europe.
2. American History—the principles of our democracy are uniquely American.
3. Government—the Founding Fathers adapted the ideas of the European philosophies to meet uniquely American needs.

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O'Connor, John R., and Robert M. Goldberg, *Exploring American Citizenship*—Globe Book Company.

Frankel, Jack R., and Frank T. Kane, *Civico: Government and Citizenship*—Allyn and Bacon.

Locke, John, *Two Treatises of Government.*

Hamilton, Alexander, *Federalist Papers #21, #23, #29.*

Montesquieu, *The Spirit of the Law.*

HANDOUT 1

Investigation List

Americans	*Europeans*
Alexander Hamilton	John Locke
Edmund Randolph	Baron de Montesquieu
James Madison	Voltaire
Roger Sherman	Jean Jacques Rousseau

Concepts: Principles of Democracy
- Separation of Powers
- Checks and Balances
- Federalism
- Limited government
- Popular Sovereignty

Select a person or concept on this list as your topic for research. The people and concepts on this list are merely suggestions. You may make other choices so long as they relate to the Constitution or the men who influenced its writing.

HANDOUT 2

Chart of Philosophical Ideas

Concept	*European*	*American*
Separation of Powers	Montesquieu, Locke	Randolph, Sherman, Madison
Checks and Balances	Montesquieu, Locke	Randolph, Sherman, Locke
Federalism		Ideas derived from debate
Limited Government	Locke, Voltaire, Rousseau, Montesquieu	All at convention
Popular Sovereignty	Locke, Rousseau	All at convention
Flexibility		Idea derived from debate

Simplified version of what students should learn.

HANDOUT 3

Major Contributors to the United States Constitution

Person	*Major contributions*
John Locke	Consent of the governed
Baron de Montesquieu	Separation of powers with checks and balances
Voltaire	Limited government Separation of church and state
Jean Jacques Rousseau	The Social Contract
Alexander Hamilton	Strong national government
Edmund Randolph	The Virginia Plan
James Madison	Notes on the Convention Federalist Papers Had a strong influence in drafting the Virginia Plan
Roger Sherman	The Connecticut Plan

HANDOUT 4

Where Ideas Are Found in the Constitution

Consent of the governed	Preamble
Separation of powers	three branches of government
Checks and balances	
Separation of Church and State	Article 7 and 1st amendment
Social Contract	Declaration of Independence Articles 1 and 6
Popular Sovereignty	Article 4, section 4
Federalism	Article 1
Flexibility	Article 51

Ratification of the Federal Constitution in Massachusetts

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INTRODUCTION

This lesson, which can be done as a short or extended activity, has students examine the debate which surrounded the ratification of the Constitution in the state of Massachusetts. Well known personalities of the period come to life as students assume the roles of key players in the ratification process. Teachers can have students conduct a full interpretive reenactment of the ratification convention. Student research into their chosen characters is key to the success of this lesson.

AUDIENCE

Upper elementary, middle, and secondary

TIME TO COMPLETE

One day to one year

GOALS

As a result of this lesson, students will:

- understand the key issues of the ratification of the United States Constitution
- appreciate the points of view and personalities of historical figures involved in the ratification in Massachusetts

MATERIALS

Handout 1: Background for the Teacher
Handout 2: Elbridge Gerry (Interior monologue)
Handout 3: Rufus King (Interior monologue)
Resources listed in bibliography

PROCEDURES

If you have no qualms about the why of studying ratification, the how should be easy. In September allow each student to choose a delegate to research. Obscure delegates with little information on them should go to the abler students ready to deal well with frustration, leaving well-known delegates to those students whose priorities in September are not yet in class. Key figures, however, with pivotal roles, should be assigned to strong personalities. During the course of the year each student will investigate his or her delegate's reactions, feelings, and role before the Revolution, under the Articles, and during the Philadelphia convention. With a growing knowledge of how to do historical research, in time students will be contacting historical societies, county and town histories, archives, and local libraries for information on their delegate.

You might want to set up a correspondence network with towns involved in ratification so that students in those towns can feed information to yours. Some students may want to do more than just research a delegate.

From this point, it is an easy and logical step to make contact with the other twelve states, even the two who did not at first ratify. This will give them a second chance. Contact with other interested schools and students will lead to a written correspondence between Massachusetts and Virginia delegates, giving students a direct feel for debate through letters; as a final activity, establish satellite hook ups among the thirteen original states with simultaneous ratification conventions and debates. Sound improbable? So does a fourteen year old's wanting to read Charles Beard or a student who had never liked school doing a "high five" when he found a reference to his delegate in the rare book section of the State House Library sound improbable.

For those who are not as fortunate to have a school system which encourages flexibility and creativity in curriculum, ratification need not take a year or even a month to present. Taking time to debate one or two issues such as representation or the role of a standing army would not necessitate spending a lot of time on research and could be accomplished in one week or even one day. Using personalities as a basis for debate could be done by distributing interior monologues of two antagonists involved in ratification. (See Handouts)

A successful history lesson or class or year is actually quite simple to accomplish. The teacher must also be involved with all the research and investigation, but then back away from the class once students receive the assignment. A teacher must guide students about *where* to find information, but never about *what* information. Ownership of learning belongs to the student, not to the teacher. If a class is otherwise, learning comes from pressure, grades and authority, not from excitement, competition and desire. Deciding to do an interpretive reenactment means allowing students to make mistakes with their interpretations of history; it is more important that the student be involved in his/her own learning and understand his/her delegate's ideas, than to parrot back the words of his/her delegate. Because this may lead to some interesting as well as unusual interpretations, a debriefing session is a must.

EVALUATION

An interpretative reenactment of the ratification convention, by a class having just finished studying United States history is a perfect final. The issues debated here are timeless. With a thorough knowledge of their delegates' past prior to ratification, the convention becomes more than a reenactment; by interpreting the motives, feelings, and background of their delegate in his historic setting the convention comes alive again and who knows with what result. The frosting on the cake is holding the convention in full eighteenth-century dress at an educational conference, or if possible at the original site of the convention.

TIPS FROM THE TEACHER

If interested in more information such as a synopsis of the original debates, or contemporary letters dealing with ratification, or names of persons in other states involved in this project, contact: John R. Stark, 21 Minot Place, Newtonville, MA 02160.

BIBLIOGRAPHY

Austin, James T., *The Life of Elbridge Gerry.* Boston: Wills and Lilly, Court Street, Boston, 1829

Concentrate only on Chapter II in Austin's book; Gerry's objections to the Constitution (pps. 42-45) as cited in this letter to the Senate and House of Representatives of Massachusetts are in this chapter. The first part of this chapter is extremely difficult to read for any age group, not because of the content but because of the author's style. The content, however, is invaluable for anyone willing to take the time to understand it, especially for anyone arguing the Federalist position.

Is the success of the Constitution due to the changes that the Anti-federalists insisted upon or would the document have been a success regardless? If the former, Austin maintains that Elbridge Gerry deserves a large portion of the credit.

Billias, George Athan, *Elbridge Gerry, Founding Father and Republican Statesman.* New York: McGraw-Hill, 1976.

This is probably the most objective and fair representation done to date on a man frequently misunderstood and disliked. Students need only to concentrate on chapters 11 through 14. Billias' purpose is to show Gerry's moderation and interest in a balanced government. Gerry's attempt at a compromise to facilitate a workable solution in Philadelphia has often left him open to the charge of inconsistency. Billias does an excellent job of describing Gerry's true federalism.

Bowen, Catherine D. *Miracle at Philadelphia.* New York: Book of the Month Club, Inc., 1986.

The section dealing with ratification in Massachusetts is well written and dramatic; however, it presupposes familiarity with the events. Even so, her excellent synopsis of the debate and brief summary of the Antifederalist position as well as the description of the "powerful Federalists bloc," are all valuable pieces of information for the student. She captures the tone of the debate by a skillful selection of quotations, thus bringing the eloquent desperation of the Anti-federalists alive. This work is possibly confusing for some students without further study, but it is a good beginning source because there is enough mention of delegates and their characters (pp. 282 – 292) to motivate any young historian.

Collier, Christopher and James Lincoln Collier, *Decision in Philadelphia.* New York: Random House, 1986

This is an excellent book on the Philadelphia convention which unfortunately has very little on ratification in Massachusetts. It can be used, however, for students doing Elbridge Gerry and Rufus King, as well as for checking on an updated list of sources.

Ernst, Robert, *Rufus King, American Federalist.* Chapel Hill: University of North Carolina, 1968.

Although Rufus King is the subject, the chapter on ratification (p. 118) is extensive enough and detailed enough to act as a starting point for further research. Actually, if students read Billias' *Elbridge Gerry* and this work, they would have ample knowledge of the crucial issues and personality conflicts that permeated the proceedings in 1788. Obviously, Ernst is interested in promoting King, but he does so objectively, thus making this chapter useful for students concentrating on the Anti-federalist position.

Fiske, John, *The Critical Period of American History, 1783-1789.* Cambridge: Houghton, Mifflin & Co., 1888.

Some of Fiske's statements and conclusions have proven to be erroneous or at least biased, but the book as a whole and especially the section on

ratification in Massachusetts (pp. 316-331) is an excellent source of information for students. Not only is the wealth of information valuable, but personal tidbits scattered throughout the narrative capture students' interest. Fiske gives the Anti-federalist position fair coverage with explanations of their positions on contracts, the separation of Maine, states' rights, and town meetings. Sam Adams is a key figure in the whole process for Fiske.

Ford, Paul Leicester, ed., *Essays on the Constitution of the United States*, New York: Burt Franklin, 1892.

This is a useful source on contemporary essays for and against ratification. "Agrippa" by James Winthrop is an article Anti-federalists would find handy, especially if their argument concentrates on the so-called Critical period's being actually a time of prosperity. Students arguing the Federalist position could use "Cassius" by James Sullivan, not so much for specific information, but for its colorful and passionate appeal to the people. Ford also includes "Observations of Elbridge Gerry," now credited to Mercy Otis Warren, an essay which is extremely difficult to follow and comprehend.

Harding, Samuel B., *The Contest over the Ratification of the Federal Constitution in the State of Massachusetts*. New York: Longsmans, Green and Co. 1896.

The Introduction concentrates on the two factors which determined opposition to ratification in Massachusetts. First was the self-confidence citizens enjoyed in making political decisions via the town meetings which manifested itself in the Ashfield Resolves, opposition to ratifying the Articles, and opposition to ratifying the state Constitution. The Massachusetts populace was used to making and being involved in political decisions. Second, Harding makes a good case for the conflict between upper and lower classes on more than just economic grounds. The second chapter deals with written opposition to the Constitution. Summaries and an analysis of each article follow. *A Republican Federalist* and *Cornelius* are printed in full in the Appendix. The rest of the work deals with the Convention itself. For teachers and students taking ratification seriously this section and the book cannot be overlooked.

Hart, Albert B., ed., *Commonwealth History of Massachusetts*, Vol. III. New York: States History Company, 1929.

Chapter XIII, written by Arthur Holcombe, is an absolute must for students studying this topic. The emphasis of this chapter may be on the role of the Massachusetts delegates at the Philadelphia convention, but the information can be used for background to the ratification debate. Holcombe's style is simple, direct, and extremely well structured.

Libby, Orin G., *The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution, 1787–8*. Madison: University of Wisconsin Press, 1984.

The sections dealing with Massachusetts in this work are valuable more for their factual information and background than for information on the debate itself. The first section (p. 12) describes the character of the three sections in Massachusetts and how they voted. In the next section (p. 54), "Relation of the Paper Money and Debt Factions to the Ratification of the Constitution," Libby describes the correlation between supporters of paper money and Shays' Rebellion and the Anti-federalist vote. "Instructions to Delegates" (p. 75) is extremely useful because Libby lists the sources from each town from which he was able to get information. Starting on page 98, Libby has made an extensive list of town name changes and boundary changes, corrections to Elliot's roll of delegates, names of towns from which there is no record of participation, and finally names of towns where all delegates did not appear to vote. This source would be useful for students interested in keeping track of the vote and mapping out the districts and towns.

Van Doren, Carl, *The Great Rehearsal*. Alexandria, Va: Time-Life Books, Inc., 1981.

Although a fairly small part is devoted to the ratification convention in Massachusetts, there is enough mention of delegates and issues for this to be a good starting point. What makes Massachusetts unique is that it was the first state to print a record of its debate and more importantly to include the speeches of just plain men as well as those of the most eminent. Van Doren's main observation and contribution is his emphasis on the fact that Federalist management influenced the outcome of the convention more than the debate. The Anti-federalists were no match against Federalist tactics.

HANDOUT 1

BACKGROUND FOR THE TEACHER

The ratification conventions in the eleven states have never been given their fair share of time in most history classes, and yet it is in these conventions that all the concerns and passions of this time period came to the surface. The events prior to the 1780's and the issues which arose later are all debated, defended, and denounced in the speeches and actions of the men involved in ratification. The Anti-federalists of the 1780's were very much concerned with individual liberties and governmental infringement of them; the radicals of the 1780's were more concerned with the establishment of a stronger central government. The tension and interplay between these two ideas still goes on.

In our anxiety as history teachers to cover history from Exploration to Vietnam just to satisfy curriculum guidelines, the student comes away with a head full of facts and dates useful for quiz shows, or, worse, a long-lasting dread of a useless subject called history. The timeline, cause-and-effect, superficial textbook approach to history will never let a student feel the anguish of Amos Singletary, the eloquence of Amos Fisher, the simple and moving logic of Jonathan Smith. Facts can always be looked up; passions and involvement are permanent. With our zero to sixty-mile-an-hour mentality, history becomes a mere series of events accepted. Study one or two events in depth, however, and you will cover in spirit history from Mesopotamia to Reagan, and give students the skills to research and understand other events not covered.

Why study the Massachusetts Ratification Convention? First, the convention is a study in the art of politics. The Federalists' political maneuvering and arm twisting in Boston is a classic example of the realities and tactics of political persuasion. The Massachusetts Federalists adroitly honeyed their way to success, avoiding the ill feeling and riots that took place in Pennsylvania as a result of the Federalists' rough-shod tactics there. The best known strategies, of course, were the Federalists' successful playing on John Hancock's vanity as well as their site selection of a meeting house owned by a Federalist, with ample room for Federalist spectators. A lesser known tactic was the skillful positioning of speeches just before the introduction of amendments by the people's choice, Hancock. We will never know what went on when out of towners were wined and dined by Bostonians; flattery, full stomachs, and fine wine often dictated an act of conscience.

The second reason to study ratification in Massachusetts is the wealth of material and resources available. Not only are there several publications of the minutes of the actual convention, but pamphlets originally published in newspapers have been collected by various editors of articles by Federalists and Anti-federalists. Most general works on the writing of the Constitution mention Massachusetts as a key and pivotal state and since many of the delegates, including John Hancock, James Bowdoin, Sam Adams, Rufus King, Caleb Strong, and Nathanial Gorham, were well known outside of Massachusetts, both biographies and collections of their letters are available.

Proponents of the Constitution, anxious to avoid a premature vote and possible defeat, moved that the Constitution be studied paragraph by paragraph, section by section. This tactic has given us a rare and detailed look into the arguments and concerns of those for and those against the Constitution, as well as those unsure of their vote. The emotional reaction and passionate debate over such sections as the time and manner of elections surprise many of us today, especially when compared to the little time spent on the three-fifths clause. Our surprise and historical judgment should be modified, however; two hundred years later passion will run higher over arguments concerning Uncle Sam's increased meddling in our private lives and local politics than it will over slavery.

If a detailed study of the Constitution does not excite your interest in ratification, allow your students a chance to have a cursory glance at the famous men involved. The rabble rouser of Boston Tea Party fame will be seen in a whole different role: John Hancock becomes more than just a signature; Rufus King is not just one of four who went to Philadelphia from Massachusetts; Elbridge Gerry is alive and angry and not just a name for redistricting; and Paul Revere is no longer just famous for his ride.

65

HANDOUT 2

INTERIOR MONOLOGUES[1]

ELBRIDGE GERRY

Some say I am politically an inconsistent man. For those who really know me and are careful in their reasoning, such a charge is ludicrous. I would call myself a true Federalist.

Power must be equally divided between state government and a central government. A good measure to assure such a separation is to have the lower house elected by the people, the upper house by state legislators, and the executive by governors. A dispersal of power would result because the source of power is divided. When arguing for the measure at Philadelphia, I often took a middle stand between the extremes of my friend Luther Martin and the extremes of the eminent scholar, James Madison. To see a little good in two extremes does not constitute inconsistency.

These same critics have called me argumentative and quarrelsome. One has been bold enough to label me a Grumbletonian. I have always prided myself, however, on playing the mediator during any crisis. When Randolph wanted to throw out the Articles of Confederation and Charles Pinckney worried over the legality of doing so, I took it upon myself to smooth over this first crisis in Philadelphia by suggesting using the word federal instead of national, a solution which seemed to satisfy both men. I feel uncomfortable justifying my role, but concern for my reputation and the slights made on my character force me also to point out that I was chosen as chairman of a committee whose purpose was to find a compromise between small and large states, hardly an ideal appointment for someone who is supposedly inconsistent and argumentative. My sincerest wish was for this convention to succeed and this meant compromise. I was willing to compromise and did; this certainly does not make a man inconsistent!

I would feel foolish, indeed, writing this reply if this were the extent of the criticism leveled at me. Such criticism needs not the dignity of a reply. But those critics have also made the accusation that I am a merchant unconcerned with the needs of the common people. This is a gross misinterpretation of my stated views at the late Convention. My untiring demand for the indirect election of our state senators and the indirect election of our executive does not come from a distrust or a lack of faith in the sincerity and virtue of the people, but from a desire to see the principles of democracy, aristocracy, and monarchy equally represented in our government. The extreme of democracy leads to demagoguery and the extreme of monarchy to tyranny. Yes, I am an elitist and wish our government to be led by America's finest and most educated men, but I also believe that our government should be founded on the justice and virtue of the people; these two principles are mutually inclusive.

My critics have also charged me with not being able to conceive of new legislation, except in terms of my own interest. I have even heard it said that I cannot see beyond my own nose! My not signing a document that would have assured a profitable return on my investments is enough proof to lay this absurd charge to rest.

It has also been said that I wanted a Constitution which would cure the ills of the moment. Well, the cure for our ills now would be a central government with full power over the military and full power to raise money without limit. I will forever resist a peacetime army and a government given complete power to tax. Such a government is a constant threat to the liberties of the people. An immediate cure of such magnitude can never be tolerated.

My same critics have called me thin, small and bird-like. I do not disagree. I stammer when I speak and squint when I am perplexed. My nose is too large and I suffer from a nervous tic. I cannot defend against the obvious, but these same persons have called me cautious, shrewd, and narrow.

Yet two men have remained my friends during this trying time when all others have called me villainous and contemptible. I will always cherish John Adams and Thomas Jefferson for their support.

The Constitution has been ratified and I will support its ratification. However, my support will always be in the form of limiting its power.

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[1] For directions on writing interior monologues, see James Moffett, *A Student-Centered Language Arts Curriculum, Grades K-13: A Handbook for Teachers*, Houghton Mifflin, Boston, 1968.

HANDOUT 3

RUFUS KING

Mr. Elbridge Gerry is a fool. Of this fact I have no doubt for who but a fool would believe that this nation can survive under the Articles of Confederation; and if we do not survive, the liberties of the people—those liberties that are so dear to Mr. Gerry—will not survive either. Alas, one must assume that a young wife has affected not just the physical energies of this old man, but has drained him of his reason as well.

Mr. Gerry and I are both Harvard men; both represent Newburyport and have a deep personal interest in the commercial prosperity of our state. Stubbornness, however, has kept my once friend from seeing that a change is needed in our national government for this prosperity to increase. Mr. Gerry cannot see beyond our similarities and this is where we differ. But enough of Mr. Gerry; let him sit with the unenlightened rabble who oppose our new Constitution.

The need for this new Constitution is obvious. The people's liberties cannot be protected unless we have a strong national government. Central control over both sword and purse does not lead to tyranny as many would have us believe, but protects us from the perils of anarchy. I maintain, also, that such control will be most effective in the hands of a strong executive, completely independent of the influence or control of the legislative as well as judicial branches. Granted I was disappointed that we did not decide on a longer term for the executive at Philadelphia, but even so, what we finally came up with is far better than being constantly at the mercy of state legislatures which are too often guilty of legalizing popular whim. At one time in Massachusetts our state legislature was all for hanging every Shaysite and then only one year later, with the election of a new assembly, they would have pardoned them all. Reacting to popular whims does not always generate consistent policy, let alone wise policy.

Several minor issues will most assuredly come up during our attempts to ratify next week. Many have made biennial elections as provided for by the Constitution the crucial issue that makes ratification impossible. I grant that we living in Massachusetts are accustomed to annual elections and we are also accustomed to knowing personally those we send to Boston to represent us, but we are not now talking about a government just in Boston. A national government requires that representatives have the necessary time not just for becoming familiar with issues affecting *all* thirteen states but time to travel to a designated central place of national government. To see biennial elections as a means of separating government from the people is absurd and an argument that only the narrowness of vision and provincialism of a Gerry could support.

Along with the singular focus of small minds on the supposed evils of biennial elections come similar fears about the length of a senator's term. If one considers the fact that senators must not only deal with issues concerning all thirteen states but also with global issues, six years becomes almost too little time for them to have the background to make mature and wise judgments. Fears of an aristocratic tyranny in the Senate are ludicrous when state legislatures will always check their actions closely. Besides, the integrity of state government will be monitored by its Senators and, if you fear a strong national government, you should push for longer than six-year terms.

Two other insignificant objections to this Constitution threaten to bring it to ruin. One is the lack of property qualifications for representatives. I have yet to see where property and ability have any correlation. If anything, most dangers and injuries inflicted upon this nation have come from the rich. Slavery is the other objection. Let it be known by everyone that I am opposed to slavery, but my love for union and security modify my objections. Right now, slavery and the three-fifths clause are the language of America and we should not let a few so called "righteous" zealots use this minor issue to destroy a document designed to secure the liberties of all Americans, including the liberties of Mr. Gerry.

The Japanese-American and World War II: A Case Study in Constitutional Abuse

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INTRODUCTION

Democracy is a fragile political system. It is as good as its beliefs and values and laws. The United States Constitution is the foundation for this system. How well has it worked and how well do we make it work? This lesson examines the historic background of the U.S. Government's relocation and internment of the Japanese-Americans during W.W. II. Students will read original source materials and a summation of the issues involved. Students will have an opportunity to role play and discuss the various personalities involved in the 1942 internment and the current legal proceedings going on to address reparations today.

AUDIENCE

Grades seven through twelve

TIME TO COMPLETE

One to three class periods

GOALS

As a result of this lesson, students will:

- understand the "living" Constitution by using a case example of the World War II internment of the Japanese-Americans
- appreciate the origins of the war hysteria which led to the government's relocation order
- know the status of current legislative and court actions to remedy this tragedy

MATERIALS

- Handout 1: Background
- Handout 2: Instructions to All Persons of Japanese Ancestry
- Handout 3: Excerpts from Testimony to the Commission on Wartime Relocation and Internment of Civilians
- Handout 4: Questions for Role Play and Discussion

PROCEDURES

1. Distribute Handout 1. Through the lecture and discussion address the historical precedents of curtailment of individual liberties during war time and examine the context of the internment during World War II.
2. Distribute Handout 2 and have students read the evaluation instructions. Ask students to imagine that they were receiving these instructions. How would they react? What possible individual liberties are being violated in these instructions? Teachers might want to have students look at the language of the Fifth and Fourteenth Amendments to examine what constitutional provisions may have been violated.
3. Teachers may use the excerpts from personal testimony to the Commission on War Time Relocation and Internment in Handout 3 in a number of ways. Students can develop role plays based on the testimony. They can be divided into small groups to discuss the impact of the experience on people's lives.
4. Conduct a class discussion using Handout 4 as a guide. Have students role play, argue or discuss the issues and points of view as they are presented.

EVALUATION

At the conclusion of this lesson, students should have an appreciation of one of our saddest moments and a thorough preparation in understanding the arguments being presented in the courts and Congress of the United States to redress this tragic wrong.

The leading questions, comments made and ongoing observation made during discussion will serve as an excellent evaluation of lessons learned.

A short evaluation quiz may be used to evaluate student understanding of the executive order, subsequent confinement, the Koramatsu case and later events.

TIPS FROM THE TEACHER

Personal Justice Denied, the Report of the Commission on Wartime Relocation and Internment of Civilians, is the definitive study of the topic. This work gives a full account of the Japanese-American experience, as well as that of the Aleuts, German Americans and Latin Americans.

This lesson plan may be integrated into a general United States history course, complement a government class discussion on the fourth and fifth amendments or be used as a separate, specific class lesson on the changing United States Constitution.

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HANDOUT 1
BACKGROUND

The Alien and Sedition Acts were passed in 1798. The Alien Acts allowed the government to deport aliens who were suspected of being disloyal or dangerous to the new United States. The Sedition Act made it a crime for anyone to oppose the federal government. Many people criticized the acts when they were in force. When the Alien and Sedition Acts expired a few years later, they were not renewed.

President Abraham Lincoln asked Congress to suspend the writ of habeas corpus during the Civil War of the 1860's. This allowed him to arrest and detain civilians suspected of disloyalty.

Other wars also resulted in a curtailing of individual freedoms. During the War of 1812, British subjects could not live within forty miles of the eastern coast. In WWI, there was strong anti-German and anti-Italian feeling in America. Names were changed, German was dropped from school curriculums and many customs and traditions identified with our war enemies were halted. German and Italian aliens were allowed to live in this country as long as they expressed loyalty to the United States. There were instances of arrest or expulsion when individuals were shown to be dangers to "public safety."

President Franklin D. Roosevelt used his presidential wartime powers to issue orders concerning German, Italian and Japanese aliens. These aliens were forbidden to give information to our enemies or interfere with our defense. It was illegal for them to have cameras or guns. Membership in certain organizations was prohibited. Travel was limited. The FBI and the U.S. Attorney General arrested enemy aliens who were considered dangerous.

Officials took far more individualized, selective action against the Japanese than against enemy aliens of other nationalities. No mass exclusion or detention was ordered against American citizens of German or Italian descent. The Japanese case was unique.

Approximately 125,000 people of Japanese descent lived in this country; 70,000 of the Japanese-Americans were citizens by birth. Most, about 112,000, lived on the West Coast.

The Japanese attack on Pearl Harbor, Hawaii, immediately changed the status of the Japanese in America. Bitterness and hatred suddenly became part of the daily lives of the Japanese-Americans. They became "Japs" and were viewed as the enemy. Their loyalty to America was questioned and there were growing fears that all Japanese were spies. Life in America became a nightmare: stores denied food and services; banks refused to do business with them. There were insults and ridicule, attacks and beatings.

On February 19, 1942, President Roosevelt signed Executive Order 9066, empowering the Secretary of War and designated military commanders to exclude any and all persons, citizens and aliens, from designated areas in order to secure national defense objectives against sabotage, espionage and fifth column activity. On the alleged basis of "military necessity," all American citizens of Japanese descent and all Japanese resident aliens were excluded from the West Coast.

Lieutenant General John L. DeWitt was commander of American military defenses on the West Coast. He requested that all 112,000 Japanese-Americans in the area be evacuated and "relocated" away from the West Coast. Relocation centers, Justice Department internment camps and citizen isolation camps were established in eleven Western states to house the Japanese Americans.

The policy of exclusion, removal and detention was carried out without judicial review, and prolonged exclusion continued without adequate regard to evacuees' demonstrated loyalty to the United States. Congress supported the policy by enacting a federal statute which made criminal the violation of orders issued pursuant to Executive Order 9066. The U.S. Supreme Court also upheld exclusion in the context of war.

The case of Fred Korematsu is a model of the time. Korematsu was 22, a native born American citizen. He ignored the relocation order and went into hiding. He was eventually arrested and brought to trial. The American Civil Liberties Union defended Korematsu in court. The case was lost and Korematsu received five years' probation and was interned at Topaz, Utah. Eventually the U.S. Supreme Court heard the case. Defense lawyers based their arguments on the grounds that it was unconstitutional to take people out of their homes and intern them solely on the basis of race. Likewise, they argued that there was no evidence of disloyalty and that Korematsu had a constitutional right to be treated as an individual and not as a member of a particular racial group.

Government lawyers argued that the 112,000 Japanese were interned under a lawful military order issued for the protection of the West Coast, that some Japanese had been proven to be loyal to Japan, and it was necessary to remove all Japanese-Americans from a "war zone."

The Supreme Court announced its decision on December 18, 1944, more than two years after the evacuation order. Korematsu lost 6-3. Justice Hugo L. Black wrote the majority opinion.

He said: "The military authorities... concluded that curfew provided inadequate protection and ordered exclusion. Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we were at war with the Japanese Empire, ... military authorities feared an invasion of our west coast and felt constrained to take proper security measures ....."

Justice Frank Murphy's dissenting opinion emphasized due process and basic human and civil rights. He wrote: "Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life ....
All residents of this nation ... must be treated at all times as the heirs of the American experiment and are entitled to all the rights and freedoms guaranteed by the Constitution."

In early 1943, the government proposed to end detention, but not exclusion, for those who volunteered to join the Army. In the spring of 1943, the highest civilian and military officials of the War Department concluded that military requirements no longer justified excluding American citizens of Japanese descent or resident aliens from the West Coast. However, it was not until May, 1944, that a recommendation to end exclusion was put before FDR at a Cabinet meeting. Nevertheless, exclusion ended only after the Presidential election in November, 1944.

The excluded Japanese suffered enormous damages and losses, both material and intangible. The loss of farms, businesses, and homes, disruption of careers and professional lives and long-term loss of income, earnings and opportunity is incalculable. In 1983 dollars, the loss was determined to fall between $810 million and $2 billion dollars.

In 1980 Congress established a bipartisan Commission on Wartime Relocation and Internment of Civilians. The commission reviewed postwar actions by federal, state and local governments to partially redress the wrongs that were done.

The Commission noted the following:

1. In 1948, Congress passed the Japanese-American Evacuation Claims Act. This gave persons of Japanese ancestry the right to claims from the government of real and personal property losses. Only $37 million was ever paid in claims, an amount far below fair compensation.
2. In 1972, the Social Security Act was amended so Japanese Americans over 18 would be deemed to have earned and contributed to the Social Security system during their detention.
3. In 1978, the federal civil service retirement provisions were amended in the same way.

The Commission made the following recommendations:

1. Congress should pass a joint resolution, signed by the President, recognizing that a grave injustice had been done and offering the apologies of the nation for acts of exclusion, removal and detention.
2. The President should pardon those who were convicted of violating the statutes imposing a curfew on American citizens on the basis of their ethnicity and requiring the ethnic Japanese to report to assembly areas. The Department of Justice should review other convictions and make like redress.
3. Executive agencies should help with restitution of positions, status or entitlements lost in whole or in part because of acts or events between December 1941 and 1945 and give full consideration for the same.
4. Congress should demonstrate official recognition for the injustice done. A fund should be developed to sponsor research and public educational activities so that the events which were the subject of this inquiry will be remembered. Comparative studies of similar civil liberties abuses or of the effect upon particular groups of racial prejudice should also be undertaken.
5. Congress should establish a fund which provides for personal redress to those who were excluded. Appropriations of $1.5 billion should be made to the fund. A one-time compensatory payment of $20,000 to each of the approximately 60,000 surviving persons should be made. The remainder of the monies should be used for public educational purposes as well as for the general welfare of the Japanese community. The Commission concluded its recommendation with this line: "It is our belief that, though history cannot be unmade, it is well within our power to offer help, and to acknowledge error."

The Japanese-American survivors and their families still wait. Civil suits have been filed in state and federal courts. Bills have been introduced in the Congress. The final question: How much longer, if ever?

HANDOUT 2
WESTERN DEFENSE COMMAND AND FOURTH ARMY WARTIME CIVIL CONTROL ADMINISTRATION
PRESIDIO OF SAN FRANCISCO, CALIFORNIA

INSTRUCTIONS TO ALL PERSONS OF JAPANESE ANCESTRY LIVING IN THE FOLLOWING AREA:

All of that portion of the County of Alameda, State of California, within that boundary beginning at the point at which the southerly limits of the City of Berkeley meet San Francisco Bay; thence easterly and following the southerly limits of said city to College Avenue; thence southerly on College Avenue to Broadway; thence southerly on Broadway to the southerly limits of the City of Oakland; thence following the limits of said city westerly and northerly, and following the shoreline of San Francisco Bay to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 27, this Headquarters, dated April 30, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P.W.T., Thursday, May 7, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P.W.T., Thursday, April 30, 1942, without obtaining special permission from the representative of the Commanding General, Northern California Sector, at the Civil Control Station located at: 530 Eighteenth Street, Oakland, California.

Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

THE FOLLOWING INSTRUCTIONS MUST BE OBSERVED:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Friday, May 1, 1942, or between 8:00 A. M. and 5:00 P. M. on Saturday, May 2, 1942.
2. Evacuees must carry with them on departure for the Assembly Center, the following property:
   - (a) Bedding and linens (no mattress) for each member of the family;
   - (b) Toilet articles for each member of the family;
   - (c) Extra clothing for each member of the family;
   - (d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;
   - (e) Essential personal effects for each member of the family.

   All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.
3. No pets of any kind will be permitted.
4. No personal items and no household goods will be shipped to the Assembly Center.
5. The United States Government through its agencies will provide for the storage at the sole risk of the owner of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.
6. Each family, and individual living alone will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 1, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Saturday, May 2, 1942, to receive further instructions. J. L. DeWitt, Lieutenant General, U.S. Army Commanding, April 30, 1942. See Civilian Exclusion Order No. 27.

HANDOUT 3
EXCERPTS FROM TESTIMONY TO THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS.

It is difficult to describe the feeling of despair and humiliation experienced by all of us as we watched the Caucasians coming to look over our possessions and offering such nominal amounts knowing we had no recourse but to accept whatever they were offering because we did not know what the future held for us.

People who were like vultures swooped down on us going through our belongings offering us a fraction of their value. When we complained to them of the low price they would respond by saying, "You can't take it with you, so take it or leave it." . . . I was trying to sell a recently purchased $150 mangle. One of these people came by and offered me $10.00. When I complained he said he would do me a favor and give me $15.00. I went for my last look at our hard work. . . . Why did this thing happen to me now? I went to the storage shed to get the gasoline tank and pour the gasoline on my house, but my wife. . . said don't do it, maybe somebody can use this house; we are civilized people, not savages.

On May 16, 1942, my mother, two sisters, niece, nephew, and I left . . . by train. Father joined us later. Brother left earlier by bus. We took whatever we could carry. So much we left behind, but the most valuable thing I lost was my freedom.

On May 16, 1942 at 9:30 a.m., we departed for an unknown destination. To this day, I can remember vividly the plight of the elderly, some on stretchers, orphans herded onto the train by caretakers, and especially a young couple with 4 preschool children. The mother had two frightened toddlers hanging on to her coat. In her arms, she carried two crying babies. The father had diapers and other baby paraphernalia strapped to his back. In his hands he struggled with duffle bag and suitcase. The shades were drawn on the train for our entire trip. Military police patrolled the aisles.

When we finally reached our destination, four of us men were ordered by the military personnel carrying guns to follow them. We were directed to unload the pile of evacuees' belongings from the boxcars to the semi-trailer truck to be transported to the concentration camp. During the interim, after filling one trailer-truck and waiting for the next to arrive, we were hot and sweaty and sitting, trying to conserve our energy, when one of the military guards standing with his gun, suggested that one of us should get a drink of water at the nearby water faucet and try and make a run for it so he could get some target practice.

At the entrance . . . stood two lines of troops with rifles and fixed bayonets pointed at the evacuees as they walked between the soldiers to the prison compound. Overwhelmed with bitterness and blind with rage, I screamed every obscenity I knew at the armed guards daring them to shoot me.

An oft-repeated ritual in relocation camp schools . . . was the salute to the flag followed by the singing of "my country, 'tis of thee, sweet land of liberty"—a ceremony Caucasian teachers found embarrassingly awkward if not cruelly poignant in the austere prison-camp setting.

At Parker, Arizona, we were transferred to buses. With baggage and carryalls hanging from my arm, I was contemplating what I could leave behind, since my husband was not allowed to come to my aid. A soldier said, "Let me help yo, put your arm out." He proceeded to pile everything on my arm. And to my horror, he placed my two-month-old baby on top of the stack. He then pushed me with the butt of the gun and told me to get off the train, knowing when I stepped off the train my baby would fall to the ground. I refused. But he kept prodding and ordering me to move. I will always be thankful [that] a lieutenant checking the cars came upon us. He took the baby down, gave her to me, and then ordered the soldier to carry all our belongings to the bus and see that I was seated and then report back to him.

They began to file out of the bus, clutching tightly to children and bundles. Military Police escorts anxiously help and guides direct them in English and Japanese. They are sent into the mess halls where girls hand them ice water, salt tablets and wet towels. In the back are cots where those who faint can be stretched out, and the cots are usually occupied. At long tables sit interviewers suggesting enlistment in the War Relocation Work Corps. . . . Men and women, still sweating, holding on to children and bundles, try to think. . . . Interviewers ask some questions about former occupations so that cooks and other types of workers much needed in the camp can be quickly secured. Finally, fingerprints are made and the evacuees troop out across an open space and into another hall for housing allotment, registration and a cursory physical examination. . . . In the end, the evacuees are loaded onto trucks along with their hand baggage and driven to their new quarters.

Pinedale. The hastily built camp consisted of tar paper roofed barracks with gaping cracks that let in insects, dirt from the . . . dust storms . . . no toilet facilities except smelly outhouses, and community bathrooms with overhead pipes with holes punched in to serve as showers. The furniture was camp cots with dirty straw mattresses.

Manzanar. [The barracks were] nothing but a 20 by 25 foot of barrack with roof, sides of pine wood and covered with thin tar paper . . . no attic, no insulation. But the July heat separated the pine floor and exposed cracks to a quarter of an inch. Through this a cold wind would blow in or during the heat of the day dusty sand would come in through the cracks. To heat, one pot bellied wood stove in the center of the barracks.

Puyallup (Camp Harmony). This was temporary housing, and the room in which I was confined was a makeshift barracks from a horse stable. Between the floorboards we saw weeds coming up. The room had only one bed and no other furniture. We were given a sack to fill up with hay from a stack outside the barracks to make our mattresses.

Portland. The assembly center was the Portland stockyard. It was filthy, smelly, and dirty. There was roughly two thousand people packed in one large building. No beds were provided, so they gave us gunny sacks to fill with straw, that was our bed.

Life begins each day with a siren blast at 7:00 a.m., with breakfast served cafeteria style. Work begins at 8:00 for the adults, school at 8:30 or 9:00 for the children.

Camp life was highly regimented and it was rushing to the wash basin to beat the other groups, rushing to the mess hall for breakfast, lunch and dinner. When a human being is placed in captivity, survival is the key. We develop a very negative attitude toward authority. We spent countless hours to defy or beat the system. Our minds started to function like any POW or convicted criminal.

I recall sitting in classrooms without books and listening to the instructor talking about technical matters that we could not study in depth. The lack of qualified evacuee teachers, the shortage of trained teachers was awful. I remember having to read a chapter a week in chemistry and discovering at the end of a semester that we had finished one full year's course. There was a total loss of scheduling with no experiments, demonstrations or laboratory work.

In some ways, I suppose, my life was not too different from a lot of kids in America between the years 1942 and 1945. I spent a good part of my time playing with my brothers and friends, learned to shoot marbles, watched sandlot baseball and envied the older kids who wore Boy Scout uniforms. We shared with the rest of America the same movies, screen heroes and listened to the same heartrending songs of the forties. We imported much of America into the camps because, after all, we were Americans. Through imitation of my brothers, who attended grade school within the camp, I learned the salute to the flag by the time I was five years old. I was learning, as best one could learn in Manzanar, what it meant to live in America. But i was also learning the sometimes bitter price one has to pay for it.

Many families with sons in the United States Army and married daughters living in Japan are said to feel terrific conflict. Many who consider themselves good Americans now feel they have been classed with the Japanese. . . . There is a great financial insecurity. Many families have lost heavily in the sale of property. . . . Savings are dipped into for the purchase of coupon books to be used at the center store, and with the depletion of savings comes a mounting sense of insecurity and anxiety as to what will be done when the money is gone. . . . Doubtless the greatest insecurity is that about post-war conditions.

Many wonder if they will ever be accepted in Caucasian communities.

HANDOUT 4
QUESTIONS FOR ROLE PLAY AND DISCUSSION

The year is 1942. Role play the following:

1. You are 15 years old and Japanese-American. Your family has just been notified of the movement to a camp. What questions do you ask your parents? What responses do they give to you and your brothers and sisters?
2. You are a member of President Rossevelt's inner circle. A decision is being made about the Japanese-American relocation. What arguments are you and others of the inner circle going to present to the president?
3. You are a member of the ACLU. How do you react to the internment order?
4. You are John Q. Public, Anywhere, U.S.A. You see yourself as a middle-of-the-roader. You are chatting with several of your friends. Philosophically, you cross the political spectrum. What are all your reactions to the internment order? (Extend this question by having the friends be Black, Indian, white, from the West Coast, from the Midwest, from the South).
5. You are Lieutenant General DeWitt. Why do you request the evacuation and relocation away from the West Coast?
6. You are a Japanese-American. You are chatting with Japanese-American friends. You are discussing all the viewpoints on the evacuation.
7. You are the editorial page editor of a daily newspaper. You try to give a balanced viewpoint on your opinion-editorial page. What are the pro and con arguments about the evacuation and internment that you will include in your editorial? (For an extension of this exercise, have students write editorials expressing various viewpoints about the issue.)
8. You are Fred Korematsu. How do you respond to the order?
9. You are teaching the U.S. Constitution to your high school or junior high school students. One student asks: "Teach, how does this order tie in with the U.S. Constitution? I want you to explain this to us in light of the current time and American History." What is your comment?

The year is 1987. Role play the following:

1. You are an attorney for the Japanese-Americans seeking redress for the evacuation and internment during WWII. What arguments will you give to the courts?
2. You are the U.S. Government attorney in this case. You have been instructed to take a stand against compensation to the Japanese. What are your arguments?
3. You are a member of the U.S. Congress. You are considering legislation to help the Japanese-Americans. What would you include/exclude in your bill in terms of the recommendations of the final report of the Commission on Wartime Relocation and Internment of Civilians?
4. You are members of the U.S. Congress responding to the proposed bill. What are your arguments for and against the proposals? What would you recommend that is different from the proposals?
5. You are Fred Korematsu. You are being interviewed about your WWII court case and your life since the war. What are you going to say in your interview?
6. You are teaching a course in your government unit about the U.S. Constitution and its 200th anniversary. How would you introduce and teach this lesson?

Exploring Constitutional Issues Using Primary and Secondary Source Materials

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INTRODUCTION

This lesson will provide a model to examine constitutional issues such as judicial review and equal protection through the use of primary and secondary source material. Goals of this lesson include a novel approach to teaching the constitution, student focus on original source material, and student development of critical thinking skills. This lesson is highly motivating because it departs from the normal use of textbooks and lectures and allows students to explore on their own. Such freedom creates confidence and interest.

AUDIENCE

Secondary students: 11th – 12th grade, 16 – 18 years of age. Level will vary with types of materials used and depth of exploration.

TIME TO COMPLETE

Two to four days

GOALS

As a result of this lesson, students will

- gain valuable knowledge about constitutional issues such as application of the 14th Amendment and school funding through "hands on" experience with documents that teach the issue through process

MATERIALS

Copy of the U.S. Constitution, with amendments

Copy of State Constitution

Law Review Article, West Virginia University Law School, "Pauley v. Bailey: Towards a 'Thorough and Efficient' School System," by Jacqueline A. Kinnaman (available under request from CRADLE)

Master Plan for Education, West Virginia Board of Education

Case Law samples

Superintendent's opinion—*Master Plan for Education*

Final Order—Judge Arthur Recht, *Pauley v. Bailey*

Legal terms list (Handout 1)

PROCEDURES

1. Identify a student generated issue(s) that is of constitutional significance. For example, a newspaper article of local focus that brings out a constitutional issue. 2. Preview basic concepts of the Constitution, e.g.: due process, division of powers, checks and balances, judicial review, powers of the 14th Amendment, the elastic clause. 3. Introduce the primary and secondary sources (see Materials section). Include information about source of document, purpose, author(s), language used, significance, and provide a vocabulary list of simple definitions to further explain documents. A guest speaker (for example, a judge) could also be used to make these documents more realistic to the students. 4. Have students read and discuss in groups the documents and identify constitutional issues already discussed. Teacher may be facilitator in group discussion. 5. Students should identify part of the Constitution that most appropriately applies to the constitutional issues raised.

ALTERNATIVE PROCEDURES

1. Case law such as *Brown v. Board of Education*, 1954, could be used to teach concepts such as "separate but equal." 2. Congressional Record articles could be used to teach the concept of legislative responsibility for funding. 3. Law Review articles could be used to teach judicial review concepts. Other documents of interest might be: Copies of Congressional bills, copies of state legislative bills, copies of city ordinances, copies of state and federal supreme court opinions, copies of court orders, or copies of other landmark court decisions.

EVALUATION

Students should show how they used primary sources in their choice of evaluation procedures. Evaluation could be in the form of a panel discussion and presentation on the findings of constitutional issues through use of documents. Students could also write feature articles for the school newspaper about their findings. Essay contests could be run and awards given for the best essays. Measurement will become clear as students apply the knowledge they have learned about the Constitution in further studies. Top level students might use information gained to write a mini-term paper on a constitutional issue such as the problems of school funding in their local area. Less advanced students might create a short dramatization about one of the key issues surrounding one of the documents studied. An example might be found in the *Brown v. Board of Education* case (see appendix for citation). Evaluation can be cumulative in both procedures based on discussion, note-taking during guest speaker's visit and written analysis.

TIPS FROM THE TEACHER

The key to success of this lesson is to convince the students that they have as much skill and knowledge about interpreting constitutional issues as anyone else because the Constitution is a living document that grows with the times and with everyday events and people. Teacher can generate constitutional resource materials for student use in the classroom.

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*This bibliography focuses on a West Virginia issue and is an excellent example of one teacher's use of state primary source materials. Teachers in other states can develop similar state and local issues using this lesson format as a guide.

HANDOUT 1

SAMPLE VOCABULARY LIST

1. Appellant—parties that lose in a lower court and then appeal to a higher court.

2. Bill of Rights—Special sections in the United States and State Constitutions that list the rights government cannot deny.

3. Checks and balances—Principle of American government in which each branch of government exercises a check on the powers of the others.

4. Concurrent powers—Powers that both national and state governments may exercise.

5. Due process—Found in the 5th and 14th Amendments. A citizen cannot be denied fair procedural enforcement of law and laws must be constitutional as they are enforced.

6. Equal protection—Requirement that laws may not arbitrarily discriminate between people and groups.

7. 14th Amendment—It forbids any state from depriving "any person of life, liberty, or property, without due process of law."

8. Implied powers—powers of the national government indirectly expressed in the Constitution.

9. Judicial review—Principle of American government by which courts have the power to declare acts of the legislature or judicial branches contrary to the Constitution.

10. Reserved powers—Powers not granted to the national government or denied to the states.

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A Woman's Place Is in the House . . . And the Senate

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INTRODUCTION

The focus of this unit is on the historical development of the rights of women in the nation. Students will use reference materials and resource people to discover whether their state was a leader in establishing women's legal rights. The author has developed a National Timeline of Women's Rights to serve as a resource and model. "Women were not discriminated against in the original Constitution; they were completely ignored." (Claudia Bushman, Ph.D., Delaware Heritage Commission) In studying the Constitution it is important to consider the population that was left out and, therefore, excluded from the equal protection of the laws—women and minorities—and to learn how equal rights have been extended to those who were originally disenfranchised. The purpose of this unit is to enable students to research and compare the historical development of the rights of women in the nation and in their own state.

AUDIENCE

United States History or Government Classes

TIME TO COMPLETE

Five days and may be extended

GOALS

As a result of this lesson, students will:

- use the National Timeline of Women's Rights as a model for developing a state timeline of women's rights
- discover whether their state was a leader or follower, compared to the nation, in establishing women's legal rights.

MATERIALS

- National Timeline of Women's Rights (Handout 1)
- Annotated Bibliography for Teachers (Handout 2)
- Annotated Bibliography for Students (Handout 3)
- poster paper to create a timeline comparing women's rights in the nation and state

PROCEDURES

1. Introduce the unit by asking students to brainstorm ten famous men in government at the national or state level; then brainstorm ten famous women. Note how long it takes to generate both lists. Continue brainstorming until no further names are listed. Ask students why it was easier to think of men than women. Discuss the characteristics of the men and women listed (position in government, national vs. state, historical vs. contemporary figure).
2. Ask students to guess how many times the words "male" and "female" are used in the Constitution. Explain that the Constitution does not mention gender at all until the 14th Amendment. (There was nothing in the Constitution which either denied or guaranteed equal rights to women. Gradually, through the 19th amendment, state and federal legislation, and interpretation of the 14th amendment by the Supreme Court, women's legal rights have expanded.)
3. Use the National Timeline of Women's Rights to find out when and where women could first own property, serve on a jury, vote, serve in Congress, be protected against discrimination in hiring on the basis of sex, and participate in school sports on an equal basis. Political, economic, and social forces have interacted to increase women's legal rights. Discuss the role of state legislatures, Congress, and the Supreme Court in expanding women's legal rights. Look for historical turning points for women's rights and discuss other historical events which preceded these turning points such as the abolitionist movement, Civil War, temperance movement, World War I, and civil rights movement.
4. Explain that the purpose of the research is

for students to discover whether their state was a leader or a follower in granting rights to women. Using the National Timeline as a model, choose research questions such as: When could women in the state first vote? Serve in the legislature? Serve in Congress? Obtain a divorce? Have custody of children? Obtain an abortion? Receive maternity leave without penalty? Serve on juries? Own property? Obtain credit? Receive equal pay for equal work? Have equal access to sports activities in school?

5. Brainstorm with students possible sources of information about women's legal rights in their state. Be sure to include the following: textbooks and reference materials on women's history in the school, local public, and university libraries or through local or state historical societies and museums; resource people in the community including mayor's or governor's office, state legislative delegation or Congressional delegation staff; local or state women's commission; League of Women Voters, local chapter of N.O.W., local attorneys and judges and senior women in the community who could be interviewed.
6. Assign individual students or groups to research questions and sources of information. Allow time for research in the libraries. Help students develop telephone skills to assist them in telephoning for appointments or interviews with local resource people.
7. Assign less able students to create the timeline using the data from the National Timeline and adding other national and state data as students gather the information. They can also develop a trivia game using the data from the timeline.
8. Help students develop interview questions and invite community resource people to participate in a panel discussion of women's rights.
9. Examine the historic debate over woman suffrage, beginning with the correspondence of Abigail and John Adams. Trace the development of the suffrage movement nationally and in the state. (The local/state voter registration office can provide information on the number of women voters in the students' community.)
10. Investigate the rules for male/female participation in sports. Invite a speaker from the state athletic association to explain state laws and court decisions in this area.
11. Explore the legislation and court decisions regarding affirmative action and the prohibition of job related discrimination on the basis of sex. Ask an attorney or representative from the local or state employment office to discuss recent laws and decisions in this area.
12. Discuss women's rights in the home and family including laws about marriage, divorce, child custody, domestic violence, rape, abortion, and birth control. Invite an attorney or a speaker from a local women's group, social services department, or police department.
13. Add data to the timeline and reach a consensus on whether the students' state was a leader or follower in the development of women's rights.
14. Rewrite the Bill of Rights from a feminist point of view.
15. Read biographies of women who worked for women's rights.
16. Prepare a series of 30 second Public Service Announcements (P.S.A's) for the radio with the theme "Women Who Expanded Our Rights."
17. Write a short skit about a woman who was involved in a controversial issue over women's rights and present it to the class.
18. Find pictures or make drawings showing the differences in lifestyle and clothing among women in various time periods. Discuss the assumptions about women's rights implicit in these styles.
19. Design pictures showing women's lifestyle of the future. What changes in the law or in society will be necessary to bring about these future styles?

EVALUATION

Students may be evaluated on their active involvement in the research and discussion of women's legal rights. A pre-test and post-test using the National Timeline of Women's Rights could be administered to gauge the increase in student's knowledge of women's legal rights.

TIPS FROM THE TEACHER

Extension activities include the following:

1. Compare the 1776 Declaration of Independence with the 1848 Women's Declaration of Independence and the 1876 Declaration of Rights.* Write a new Declaration of Independence incorporating ideas from all three.
2. Interview senior community women about their recollections of women's legal status as they were growing up; write and publish the stories.

3. Find out how many women lawyers, judges, executive office holders, and legislators there are in the local community and compare to the number of men who hold similar positions.

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See *The National Timeline of Women's Rights* (Handout 1) which matches these numbers with references.

HANDOUT 1
NATIONAL TIMELINE OF WOMEN'S RIGHTS

1648 Maryland
Margaret Brent asks to vote in colonial assembly—Governor says "No." Brent protests.

1770's Doctrine of Coverture
When a woman married, her separate legal identity was suspended. She lost her property and could not enter a contract without the signature of her husband or male relative, could not enter a profession, sue or be sued, serve on juries, vote, speak in public, seek government office, get an education, or serve as legal guardian of her children. But still she could be fined, jailed, whipped, placed in stocks, branded, or drowned. (6)

1774 Ann Lee
Founds Shaker religion and lectures for women's equality.

1775 Nanye-He (Nancy Ward)
Chosen as "Beloved Woman;" headed Women's Council for Cherokees, and was member of Cherokee Council of Chiefs.

1776 Abigail Adams' Letter "Dearest Friend"
Abigail Adams questioned the legal and political position of women in society in her famous letter during the writing of the Declaration of Independence. "I desire you would Remember the Ladies . . . ." All men were potential tyrants, in government and in the family. Abigail wanted Congress to revise or eliminate laws that gave men absolute power over their wives. She was concerned about domestic violence. (4)

1776 New Jersey Constitution defined voters as "all free inhabitants who fulfilled residency and property requirements." (4)

1780 Massachusetts
Women property owners could vote.

1787 U.S. Constitution
Signed—neither denies nor grants woman suffrage, but all white women are US citizens.

1807 New Jersey Legislature restricted suffrage to white men. (4)

1839 Mississippi Married Women's Property Act
Gave married women the right to sue and be sued, manage and control own property, enter into contracts, be employed without husbands' permission and keep their earnings. Didn't help slave women with no property or earnings or Mexican women. New York Married Women's Property Act also gave women joint guardianship of children. (5)

1848 Women's Rights Convention at Seneca Falls, New York
Elizabeth Cady Stanton and Lucretia Mott presented 18 grievances in Woman's Declaration of Sentiments including suffrage. (5, 9)

1851 Sojourner Truth
Gave her famous "Ain't I a Woman?" speech at Women's Rights Convention in Ohio.

1855 Congressional Law Regarding Single Nationality for Citizens
Women's nationality determined by husband's nationality. (10)

1868 14th Amendment
State's representation in Congress would be reduced if it denied qualified "male" citizens of 21 or older the right to vote. This was the first reference to gender at all in the Constitution. This led to a redoubled effort to include woman suffrage in 15th Amendment. (5)

Suffrage Amendment
Fails to pass in Congress.

15th Amendment
Guarantees right to vote but *not* to women.

1869
Women's rights groups *split*.

American Woman Suffrage Association — Lucy Stone.
Less radical, wanted state-by-state approach to getting woman suffrage.

National Woman Suffrage Association—
Susan B. Anthony
Elizabeth Cady Stanton—introduced suffrage amendment in Congress *every year*.

Wyoming Territorial Legislature gave women the right to vote. (9)

1872 Susan B. Anthony
plus 13 other women voted in Rochester, N.Y. Anthony was jailed, tried, and fined by judge who told jury to find her guilty.

1873 Bradwell v. Illinois
Supreme Court upheld a state law prohibiting women from being lawyers because states can decide such matters and there is an "inherent difference between men and women." (5)

1875 Minor v. Happersett
Ms. Minor said denial of suffrage was unconstitutional because the right to vote was part of a citizen's unabridgeable privileges and immunities under the 14th amendment. The Supreme Court said no; each state had the power to determine suffrage. (5, 9)

1876 Women's Declaration of Rights
Susan B. Anthony's speech cited the discrepancy between universally applicable provisions of the Constitution and the way the provisions were interpreted to exclude women. (5, 9)

1908 Muller v. Oregon
Supreme Court upheld Oregon state law limiting women's work day in factories, laundries, etc., to 10 hours. The decision was a landmark in Constitutional history because it rationalized sex discrimination. (5)

1910 Washington
Women win full suffrage.

1910 Alice Paul
Forms national Woman's Party — uses direct action tactics, e.g., picketing, arrests, hunger strikes, Congressional lobbying, and pressure on political candidates.

1911 California
Women can vote.

1912 Oregon, Kansas, Arizona
Women can vote.

1913 Illinois
Women can vote in presidential elections.

1914 Montana & Nevada
Women can vote.

1915 Anthony Amendment
Voted out of committee to floor of House-defeated

North Dakota, Arkansas, New York,
Connecticut, Nebraska
Women can vote.

1918 Jeanette Rankin (R. Montana) was the first woman ever to serve in Congress.

1918 Oklahoma, Texas, S. Dakota, Michigan
Women can vote.

1919 House of Representatives
Passed 20th amendment, Pres. Wilson urged Senate to pass it, but it failed by 2 votes.

1919 Minnesota, Iowa, Missouri, Wisconsin,
Tennessee, Indiana, Ohio, Maine
Women can vote.

1920 Nineteenth Amendment granting woman suffrage is ratified by 36 states. (5, 9)

1922 Married Women's Independent Citizenship Act
If a woman married an alien who couldn't be naturalized (Chinese & Japanese), she forfeited her U.S. citizenship, but men were not required to lose U.S. citizenship if they married aliens.

1923 Equal Rights Amendment first introduced in Congress by Alice Paul

1923 Adkins v. Children's Hospital
Supreme Court invalidated a minimum wage law designed to protect women workers "because the ancient inequality of sexes was diminishing." (5, 6)

1926 Gertrude Simmons Bonnin
Dakota Sioux, organizes National Council of American Indians to protect Indian rights and citizenship.

1937 West Coast Hilton v. Parrish
Supreme Court reversed itself and upheld Washington's state wage law for women and children as constitutional. (10)

1940
Legislative proposals to give women equal pay for equal work failed.

1948 Goesaert v. Cleary
Michigan women challenge state law which excludes women from bartending unless they are wives/daughters of bar owners. Supreme Court upholds state law and says 14th amendment does not require equal treatment of men and women.

1961 Hoyt v. Florida
Florida woman sought reversal of her murder conviction on grounds that she was found guilty by all-male jury. Supreme Court disagreed and said it was reasonable for state to relieve women of jury duty. (6)

1963 Equal Pay Act of Fair Labor Standards Act prohibited discrimination in wage rates based on sex.

1963 Presidential Commission on Status of Women
Reported inferior legal, economic, social position of women.

1964 Title VII of Civil Rights Act forbade discrimination on basis of sex in hiring, firing, pay, and other conditions of employment. (5, 6)

1967 President Johnson
Requires federal departments and contractors to follow non-discriminatory employment practices.

1971 House of Representatives passed the ERA

1971 Reed v. Reed
State law establishing automatic preferences for males over equally qualified females as estate administrators was held unconstitutional. For the first time the Supreme Court declared unconstitutional a law that discriminated on the basis of sex. (6)

1971 Phillips v. Martin-Marietta
Practice of refusing to hire women with pre-school-age children held unconstitutional because it discriminated on basis of sex.

1972 Senate passed ERA 8408
22 out of 32 state legislatures that convened that year passed ERA

1972 Title IX of Education Act forbade sex discrimination in federally funded educational programs. (6)

1973 Roe v. Wade
Laws prohibiting abortion held unconstitutional except where such laws are restricted to last three months of pregnancy or to state of fetal viability. (5)

1973 Fontiero v. Richardson
Law requiring married women army officers to prove actual dependency of spouse to qualify for benefits while married male officers automatically received such benefits, held unconstitutional because it violated 5th and 14th amendments. (5)

1974 Cleveland Board of Education v. La Fleur
Law requiring school teachers to leave job when they became 5 months' pregnant held unconstitutinal.

Geduldig v. Aiello
Supreme Court allowed California to deny benefits for pregnancy related disabilities.

Pregnancy Discrimination Act
Congress passed Pregnancy Discrimination Act prohibiting such denial of benefits.

1974 Equal Credit Act prohibited discrimination in credit on basis of sex or marital status

1975 Taylor v. Louisiana
Supreme Court ruled that excluding women from juries was unconstitutional (5)

1975 Orr v. Orr
Supreme Court prohibited authorizing alimony to wives only.

1977 Maher v. Roe
Allowed elimination of federal funding of abortions.

1981 Rostker v. Goldberg limits draft registration to men (6)

1982 ERA fails, ratified by 35 of required 38 states

1987 Johnson v. Transportation Agency
Supreme Court upheld affirmative action plan for women and ruled that hiring female applicants over similarly qualified male applicants to create a balanced work force in traditionally segregated job categories is consistent with Title VII of the Civil Rights Act of 1964.

1987 Bd. of Dir. of Rotary International v.
Rotary Club of Duarte
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Establishing Justice

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INTRODUCTION

The decisions of the Supreme Court during the 1960's had a profound effect in the areas of civil and due process rights of the accused. The Court took the initiative in expanding the rights of criminal defendants, particularly at the state level; as a result the Court itself became the focus of public controversy. This moot court activity will examine some major cases during the 1960's. Students need to be aware of the impact that the Warren Court decisions had on society to understand the significance of recent constitutional history in their own lives. This lesson can be used when studying the Court system in United States Government or American history when studying the 1960's.

AUDIENCE

Eleventh or Twelfth grade American history, government, or law class

TIME TO COMPLETE

Four-five days. Some out-of-class research may be required.

GOALS

As a result of this lesson, students will:

- gain increased knowledge on the effects of the Warren Court on civil and due process rights
- reinforce their understanding of judicial review
- practice group process and critical thinking skills
- identify the Constitutional guarantees in each case studied
- understand the issues and arguments involved in the cases

MATERIALS

Background information on Warren Court (*Constitutional Law Case Essays*)

Handout 1: Information on how to conduct a moot court

Handout 2: Summary of cases used in lesson

PROCEDURES

1. Divide the class into groups: attorneys for petitioner, attorneys for respondent, justices, and court observers.
2. Distribute Handout 1: Information on how to conduct a moot court. Discuss the content, insuring that they understand the process involved in this activity.
3. Distribute Handout 2: Summary of cases used in lesson, to all students. Assign a case to each group. Have them prepare their arguments as instructed in Handout 1.
4. Instruct the justices to review the cases and select two to be orally argued before the court. After an appropriate period of time have the court announce which two cases it will hear.
5. Conduct the moot court hearings.
6. After the cases have been argued, allow time for the justices to deliberate and prepare a decision. Have one justice write the majority opinion and one write a dissenting opinion (if any).
7. Explain how the Supreme Court decided each case and discuss the Court's reasoning.
8. Debrief the activity by giving the background on the Warren Court below. Students should be aware that the Cold War and foreign policy were major issues, particularly America's involvement in the Vietnam War. Civil rights for Black Americans continued to remain an important public policy area. The people of the U.S. were demanding more accountability by the government, whether it be in one-person-one-vote, civil liberties, or the right to protest the Vietnam War. The Warren Court played an important part in public policy when it issued its ruling in Baker v. Carr and Reynolds v. Sims (cases dealing with reapportionment). The Warren Court was innovative in many areas of civil liberties involving the first amendment. Some of the court's decisions were highly controversial. The court in many instances helped set a public policy agenda for the nation. The 1960's was a decade of social and cultural change brought on by the anti-war movement, the civil rights movement, and the war on poverty. These

movements with the help of the Warren Court changed the political landscape of the country. "When all is said and done, Earl Warren was unquestionably one of the great Chief Justices in terms of his impact on constitutional law" (Constitutional Law, page 152). Ask that all cases studied be discussed in the light of this historical background.

EVALUATION

An evaluation of the presentation will be done using Handout 1. The teacher will also discuss the other cases not chosen for argument. Some students may be assigned to write a report on the Supreme Court.

TIPS FROM THE TEACHER

A discussion on the differences between trial courts and appellate courts should be presented to the students.

The appellate courts do not hold trials; they hear oral arguments from attorneys, study briefs—written arguments—that attorneys submit, and review the record of the case in lower court. The appellate court does not concern itself with the facts in a case. Rather, its decision turns on whether the law was correctly interpreted and applied.

Research some background to the events of the 1960's.

HANDOUT 1

"Conducting a Moot Court"

The instructor will explain to the students what an appeals court is. Students will be told that in appeals court no witnesses are used and no new evidence may be presented. The attorneys for both sides will present their oral arguments before the judges.

The court will consist of a panel of justices; this can be any number: 3, 5, 7, 9 (one will be a Chief Justice). There will be a team of attorneys for the petition and one for the respondent. The remainder of the class can be observers or reporters for the T.V. station or local newspapers.

Roles and Responsibilities

At any time the judges may question the attorneys about the case. The chief justice will maintain the order of the court, extend the time limit for attorneys if requested, set down the rules of the court, and assign judges to write the majority and dissenting opinions. Judges may express their opinion about the case; they may also try to convince the other judges to side with them.

The attorneys must try to defend their side. The petitioner's attorney should show why the client's treatment was in error, and how that treatment violated the Constitution or state statute. Previous court decisions may be used to back up presentation.

Respondent's attorneys must try to present arguments that best represent their client's position. Previous court decisions may be used to back up presentation. Both sides should discuss the facts of the case.

The rest of the class will take notes and turn in a new article or interview with role players.

Preparation

Each team of attorneys will be given time to prepare their cases. They should research all material dealing with the case.

Each attorney will have ten minutes to present their arguments; two minutes of this will be used for rebuttal. The judges will then meet and deliberate on the case. This may be done in private or in front of the class. If the deliberation is in front of the class, the judges will be the only ones allowed to speak.

After the deliberation the Chief Justice will give the opinion. The Chief Justice will assign justices to write a majority and minority opinion which will be read to the class later.

Debriefing

Attorneys should be allowed to express their feeling on the roles they played. They should discuss what skills they learned.

Judges should express their feeling on their roles. They should express what they felt their responsibilities were and what they felt were problems they faced.

The rest of the class will evaluate the simulation using the following guide:

	Plaintiff	*Respondent*
1. Which team had the best presentation?		
2. Which team had the best delivery?		
3. Which team had the most convincing argument?		
4. Which team had the best rationale?		
5. Which team seems to have done the most research?		
6. Which team reacted best to the judges' questioning?		

After the class answers these questions, they should be discussed by the class as a whole.

Finally, the class should discuss whether they agree with the judges' decision. Was it reasonable? Why or why not?

HANDOUT 2

Summary of Cases

Brown v. Board of Education of Topeka,
74 S. Ct. 686 (1954)

A series of cases went to the Supreme Court from the state of Kansas, South Carolina, Virginia, and Delaware. Since all of the cases involved the same basic problem—black minors, through their legal representatives, seeking the aid of the courts in obtaining admission to the public schools of their respective communities on a nonsegregated basis—all were determined by one decision of the Court. The Kansas case is taken as the nominal leading case. In the various states, the black children were of elementary or high school age or both. Segregation requirements were on a statutory and state constitutional basis except in Kansas, where only statutory provisions were involved.

Opinions by Mr. Chief Justice Warren
(Vote: 9-0)

Question—Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities?

Decision?—Yes.

Reason—Intangible factors involved in the separation of students of similar age and qualifications solely because of their race need very serious consideration. Such segregation of white and colored children in public schools has a detrimental effect upon the colored children, an impact that is greater when it has the sanction of law. It "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . . We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Miranda v. Arizona, 86 S. Ct. 1602 (1966)

Here four cases were decided by one opinion. They came from Arizona, New York, California, and the federal courts. In each of the cases the law enforcement officials had taken the defendant into custody and had interrogated him for the purpose of obtaining a confession. At no time did the police effectively advise a defendant of his right to remain silent or of his right to consult with his attorney. In the lead case, Ernesto Miranda had been arrested at his home and then taken to a Phoenix police station where he was questioned by two police officers. After two hours he made a written confession. He was subsequently convicted of kidnapping and rape. In the New York case the charge was first degree robbery, in the California case it was robbery and first degree murder, and in the federal case robbery of a savings and loan association and a bank in California.

Opinion by Mr. Chief Justice Warren

Question—Are statements obtained from an individual subjected to custodial police interrogation under these circumstances admissible as evidence?

Decision—No.

Reason—An individual held for interrogation must be clearly informed that he has the right to consult counsel and to have his lawyer with him during interrogation. Financial inability of an accused person to furnish counsel is no excuse for the absence of counsel since in such an instance a lawyer must be appointed to represent the accused. If he answers some questions and gives some information on his own prior to invoking his right to remain silent this is not to warrant an assumption that the privilege has been waived.

The Court noted that "the prosecution may not use statements, whether exculpatory, or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

Katz v. United States, 88 S. Ct. 507 (1967)

Charles Katz was convicted in federal district court in California of violation of federal communication statutes by transmitting wagering information by telephone from Los Angeles to Miami and Boston. At the trial, evidence was introduced of Katz's telephone conversations at his end overheard by FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which Katz had placed his calls. The court of appeals had rejected the contention that the recordings had been obtained in violation of the Fourth Amendment because there was "no physical entrance into the area occupied" by the accused.

Opinion by Mr. Justice Stewart

Question—Was the search and seizure conducted in this case in compliance with constitutional standards?

Decision—The Fourth Amendment protects people and not simply "areas" against unreasonable searches and seizures. The reach of that amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure. The protection does not extend only to tangible property and to incidents where there has been trespass. What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.

In this case the surveillance was so narrowly circumscribed that a judge could have authorized the search and seizure. Omission of this authorization bypassed the safeguards provided by an objective predetermination of probable cause and substituted instead the far less reliable procedure of an after-the-event justification. This sort of bypassing leaves individuals secure from Fourth Amendment violations only in the discretion of the police.

School District of Abington Township, Pa. v. Schempp, 374 U.S. 203; 83 S. Ct. 1560; 10 L. Ed. 2d 844 (1963)

Pennsylvania by statute required that at least ten verses from the Bible should be read, without comment, at the opening of each public school on each school day. Any child could be excused from attending the Bible reading upon written request of his parent or guardian. The Schempp family, members of the Unitarian church, brought suit to enjoin enforcement of the statute. In a companion case, (Murray v. Curlett), Mrs. Murray and her son, professed atheists, brought similar action against a similar situation in Baltimore.

Opinion by Mr. Justice Clark

Question—Does the requirement of Bible reading in public school violate the establishment clause of the First Amendment made applicable to the states by the Fourteenth Amendment?

Decision—Yes

Reason—The Court noted that the Establishment Clause withdrew all legislative power respecting religious belief or the expression thereof. "The test may be stated as follows: What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. . . . The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights (of the appellees) and the petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnished no defense to a claim of unconstitutionality under the Establishment Clause."

Mapp v. Ohio, 367 U.S. 643; 81 S. Ct. 1684; 6 L. Ed. 2d 1081 (1961)

Cleveland police officers requested admission to a home to seek a fugitive who was reportedly hiding there. They had also received information that a large amount of policy paraphernalia was hidden in the house. Without a warrant, the police forced their way into the house. There they found obscene materials. This evidence was used to convict Miss Mapp in the state courts.

Opinion by Mr. Justice Clark

Question—Is evidence obtained in violation of the search and seizure provisions of the Fourth Amendment admissible in a state court?

Decision—No

Reason—Previous decisions have held that the security of one's privacy against arbitrary intrusion of the police is implicit in the concept of ordered liberty and as such enforceable against the states through the due process clause. However, the Court has previously refused to exclude evidence thus secured from state courts as "an essential ingredient of the right." Since the Fourth Amendment's right of privacy has been declared enforceable against the states through the due process clause of the Fourteenth Amendment, it is enforceable against them by the same sanction of exclusion as is used against the federal government. All evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.

Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241; 85 S. Ct. 348; 13 L. Ed. 2nd 258 (1964)

The owner of a large motel in Atlanta, Georgia, which restricted its clientele to white persons, brought suit for a declaratory judgment and for an injunction to restrain enforcement of Title II of the Civil Rights Act of 1964, which outlawed distinguishing on the basis of race, color, religion, or national origin in making available public accommodations.

Opinion by Mr. Justice Clark

Question—Does Congress have the power to enact this type of legislation under the power to regulate interstate commerce?

Decision—Yes

Reason—The power of Congress over interstate commerce includes the power to regulate local incidents and activities in both the states of origin and destination of the commerce that might have a substantial and harmful effect on that commerce. The Court concluded that "the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within

91

the power granted it by the Commerce Clause of the Constitution as interpreted by this Court for 140 years." The Court made brief mention of the power to enforce the Fourteenth Amendment, but its decision was basically that the commerce power was here being exercised.

Fourteenth Amendment — Equal Protection Clause

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INTRODUCTION

In this lesson students will discuss the issues that the Supreme Court has dealt with in connection with the Equal Protection Clause. They will evaluate these issues, and then apply them to the case of the Board of Regents of the University of California v. Bakke. Often when students read the Equal Protection Clause, they understand it to mean that the government must protect peoples' rights and that it cannot treat one citizen differently from another. However, laws frequently make distinctions between groups of citizens and frequently treat one group differently from another. The American judicial system is the arbitrator in deciding whether laws make unconstitutional distinctions between groups. The Court decides whether the discrimination against a group is fair and reasonable, and, in some cases, necessary to protect the rights of another group.

AUDIENCE

High school—American Government, American History, and contemporary affairs classes

TIME TO COMPLETE

Two class periods

GOALS

As a result of this lesson, students will:

- understand how the judicial system of the United States limits governmental power and protects civil liberties.

MATERIALS

Handout 1: Questions for Discussion
Handout 2: *Regents of University of California v. Bakke* Fact Sheet

PROCEDURES

1. Have students paraphrase the Equal Protection Clause (see topic section). Discuss the responses and explain that every law discriminates against someone. For example, a law that provides the death penalty for a convicted murderer discriminates against murderers. Discuss other examples such as laws concerning speed limits, driving ages, and drinking ages.
2. Give examples of some obviously discriminatory "imaginary laws"; for instance, fourteen-year-old girls can get their drivers' licenses. All others must wait until they are twenty years old. Discuss whether this distinct treatment of citizens is reasonable.
3. Distribute Handout 1. Divide students into groups. Have them decide whether the situations posed on the worksheet make reasonable or unreasonable distinctions between citizens.
4. Discuss the court decisions in each case. In the course of the discussion, include the following "tests" established by the Court in dealing with Equal Protection cases.
    - What was the intent of the law?
    - Does the law bear a rational relationship to the wrong it is expected to correct?
    - Are race, national origin or any other "suspect classes" involved?
5. Distribute Handout 2. Review the facts of the Bakke case. Help students determine the issues. Define reverse discrimination and affirmative action, and why they exist.
6. Depending on the level of the class, the teacher may want to walk students through the answers to questions 1-5. Ask students to write their responses.

EVALUATION

The Bakke response will serve as an evaluation. Presumably, students will apply the reasoning of the Court to decide the case. To evaluate lower groups, choose one of the cases on the first handout and have students explain the way the Supreme Court decided the case.

TIPS FROM THE TEACHER

Students were fascinated. It gave them the understanding that achieving total equality in a society is impossible and that sometimes one group must forfeit rights to accommodate another group.

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Resource Guide on Contemporary Legal Issues. Phi Alpha Delta Law Fraternity. Silver Spring: Frank Gumpert Printing, 1981.

HANDOUT 1

EQUAL PROTECTION CLAUSE: QUESTIONS FOR DISCUSSION

Directions: In the following examples, decide what group is facing discrimination. Is the discrimination reasonable or unreasonable?

1. A state law that provides a jail sentence for an interracial marriage. [Loving v. Virginia, 388 U.S. 1. (1967)]
2. A state law which makes it illegal to operate a laundry in a wooden building without a license. [Yick Wo v. Hopkins, 118 U.S. 356, 1886)]
3. A state law that denies an abortion to a pregnant woman. [Roe v. Wade, 410 U.S. 113, (1972)]
4. A private club which refuses to serve a white member's black guest. [Moose Lodge v. Irvis, 407 U.S. 163 (1972)]
5. A law that provides that only men must register for the draft. [Rostker v. Goldberg, 448 U.S. 1306 (1980)]
6. A law that provides that blacks and whites attend separate public schools. [Brown v. Topeka Board of Education, 349 U.S. 294 (1955)]

HANDOUT 2

Regents of University of California v. Bakke, 438 U.S. 265 (1978)

In 1973, the University of California created a special admissions committee to evaluate minority applicants for admission to its medical school. The minority candidates could have below a C+ grade average, while all other applicants had to have a C+ or higher grade average. Sixteen of the one hundred admitted to the medical school had to be minority students.

In 1973 and 1974, Allan Bakke, a white student, applied to the medical school and was rejected. Because he was not a minority student, his application was reviewed by the conventional admissions committee.

In both years, under the "special admissions" program the University admitted students who had lower grades and lower medical school entrance tests than Bakke did. Bakke sued the University for discrimination saying his rejection was a violation of Equal Protection Clause and the 1964 Civil Rights Act. The act said that no program receiving federal funds (the University) could discriminate because of race, color or national origin. It was Bakke's belief that the University was practicing "reverse discrimination," and that, too, was illegal according to the Fourteenth Amendment and the Civil Rights Act.

Directions: Pretend you are a Justice on the Supreme Court. Review the issues discussed in class concerning the Equal Protection Clause and previous Supreme Court interpretations of cases. How would you decide Bakke's case? Why? Consider the following questions in your answer.

1. Why did the medical school create the special admissions program?
2. What benefits would there be for society if the special admissions program was allowed to stand?
3. Can you think of alternatives to help educate minorities?
4. Can you think of an alternative way of admitting minorities?
5. Examine the "tests" the Supreme Court uses to decide cases. Would those "tests" apply to this case?

Contrasting "New" Pacific Area Constitutions with the United States Constitution

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INTRODUCTION

This is a unit of study which compares the preambles, declarations of rights, and statements of national goals excerpted from the Hawaii, Alaska, Japan, South Korea, Canada, and Philippines constitutions. Any of the lessons in this unit may be taught individually.

The United States Constitution is the "granddaddy" of all of the world's constitutions. The governments framed by other constitutions do not necessarily establish democratic or federal systems as students may often assume. The selected constitutions in this lesson are relatively new (1946-87) and thus represent an opportunity by these states to improve on the ideas found in the United States Constitution. Canada shares our British heritage while South Korea, Japan, and the Philippines are historically tied to the United States, so these countries provide a good basis for this study. This lesson was developed acknowledging the idea that students need to prepare for the "Century of the Pacific" because of that region's growing populations and economies. Students might cover this unit after they become familiar with the United States Constitution.

AUDIENCE

Seventh through twelfth grade Government, Law-related Education

TIME TO COMPLETE

Five days instruction

GOALS

As a result of this lesson, students will:

- recognize the differences between the United States Constitution and those of countries linked to our history
- understand that historical events shape constitutions
- understand that indigenous people have special rights
- understand that State constitutions can be more detailed than the federal constitution and more generous in granting individual rights
- to develop a heightened awareness of the Pacific Rim

MATERIALS

Copies of United States Constitution
Handout 1, Preambles
Handout 2, Excerpts from the Hawaii and Alaska Constitutions
Handout 3, Articles of Rights
Handout 4, Indigenous Rights in Hawaii
Handout 5, National Goals

PROCEDURES

Day One:

1. Distribute Handout 1, Preambles.
2. Write "What is a preamble?" on the board.
3. Ask students to read the preambles aloud. Have students list words they are not familiar with and have them look up the definitions. Collect these lists and create a vocabulary quiz.
4. Continue the discussion:
   a. What characteristics do the preambles have in common?
   b. The Preamble to the United States Constitution lists the purposes or goals of any government. Why is this important? (We did not have other constitutions to model)
   c. How are these preambles different from ours? Why didn't these countries just copy our Constitution?
   d. What might have caused them to include references to unification, God, or war? (Explain the historical events that led to these preambles or have students read articles to improve their background knowledge.)
5. Have each student generalize in writing: "What is a preamble?"

Day Two:

1. Distribute Handout 2, Excerpts from the Hawaii and Alaska Constitutions. Ask orally:
    a. What are the similarities and differences between the newest state constitutions and the United States Constitution?
    b. In what ways are the statements of rights different? Why might they have been written so specifically?
    c. In which amendment to the Constitution do we find the right of privacy? What phrase comes the closest to describing this right?
    d. Identify where in the state constitutions one can find the right to privacy. What effect might the explicit privacy articles in state constitutions have on the citizens of those states? Do you think they have a greater right of privacy? (In fact possession of small amounts of marijuana has been argued to be permissible using the Alaska amendment. The 24th Amendment of the United States Constitution forces states to use federal standards for search and seizure as a minimum only.)
    e. Assign students to write a description or otherwise illustrate an incident where they felt that their right of privacy was either threatened or protected.

Day Three:

1. Distribute Handout 3, Articles of Rights.
2. Begin with class discussion of the following questions:
    a. What are the rights listed in Article I of these constitutions? What are our own rights in the Bill of Rights?
    b. What are the similarities and differences between our Bill of Rights and these constitutions?
    c. Why did they describe the rights in such detail?
    d. Why are Amendments IX and X important in the United States Constitution?
    e. What might help guarantee these rights if the constitutions are not enforced?
3. Distribute Handout 4, Indigenous Rights in Hawaii. Define indigenous and discuss the following questions:
    a. What efforts have you seen in the other constitutions to provide for native groups?
    b. Why are these rights specifically listed in constitutions? (Some of the civil rights in the United States Constitution are also mandated by statute.)
    c. Highlight the section on Traditional and Customary Rights in the Hawaii Constitution. If citizens already have freedom of religion in the United States Constitution, why does the Hawaii constitution grant that native Hawaiians do not have to pay National Park entrance fees if they are visiting the volcanos for religious purposes?
4. Using Handouts 4 and 5, ask students which right they consider the most important. Gather students in designated areas of the classroom, where with other students who have selected the same right, they list some supporting ideas or examples for their choice.
5. After 15 minutes, call on two or three students from each group to explain the ideas supporting each right.
6. After hearing all opinions allow students to reconsider their choice and to move to another group if their thinking has changed.

Day Four:

1. Distribute Handout 5, National Goals.
2. Continue this inquiry in groups of five. Groups should discuss:
    a. Why are these goals listed in constitutions? Are they realistic? Achievable?
    b. Where are the goals of the United States Constitution listed?
    c. What are the goals the constitutions have in common? Why is this? (All are developing countries.)
    d. Which goals are specific to each country?
    e. Are there goals you think the U.S. might adopt?
3. Assign students to create a montage demonstrating our country's striving to achieve national goals.

EVALUATION

Formative:

1. Teacher monitors groups' progress on task.
2. Teacher observes group interactions and the class's level of enthusiasm.
3. Students will complete daily closure activities which personalize the study of rights.

Summative:

1. Essays or objective questions based on the cognitive goals can be included as part of a unit test.

TIPS FROM THE TEACHER

If the students' general background information is deficient, the teacher may provide articles on ex-Philippine President F. Marcos's wealth; Hiroshima bombing; Korean War partition; Quebec's separatist movement; and the causes of the American revolution. Provide copies of any students' rights and/or responsibilities the school district has codified. Students might read "Other Constitutions: How They Work," *Scholastic Update*, October 28, 1983, pp. 21-3.

HANDOUT 1
PREAMBLES

Constitution Act, 1982(79)
Schedule B

Constitution Act, 1982
Part I

Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

The Constitution of Japan

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honour to accomplish these high ideals and purposes with all our resources.

Korean Constitution

We, the people of Korea, proud of a glorious history, a brilliant culture and a tradition of cherishing peace from time immemorial, imbued with the sublime spirit of independence as manifested in the March First Movement, upon the birth of the democratic Fifth Republic charged with the historic mission of the peaceful unification of the homeland and national renaissance, having determined:

To consolidate national unity with justice, humanitarianism and brotherly love;

To afford equal opportunities to every person and provide for the fullest development of the capabilities of each individual in all fields, . . . further strengthening the basic free and democratic order;

To help each person discharge those duties and responsibilities concomitant to freedoms and rights; and

To promote the welfare of the people, strive for a lasting world peace, promote international prosperity and, thereby, to create a new era in our history ensuring security, liberty and happiness for ourselves and our descendants forever,

The Constitution of the Republic of the Philippines

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

HANDOUT 2
EXCERPTS FROM HAWAII AND ALASKA CONSTITUTIONS

THE CONSTITUTION OF THE STATE OF HAWAII
As amended and in force January 1, 1979

FEDERAL CONSTITUTION ADOPTED

The Constitution of the United States of America is adopted on behalf of the people of the State of Hawaii.

ARTICLE I
BILL OF RIGHTS

POLITICAL POWER

SECTION 1. All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority.

RIGHTS OF INDIVIDUALS

SECTION 2. All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities.

EQUALITY OF RIGHTS

SECTION 3. Equality of rights under the law shall not be denied or abridged by the State on account of sex.

FREEDOM OF RELIGION, SPEECH, PRESS, ASSEMBLY AND PETITION

SECTION 4. No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

DUE PROCESS AND EQUAL PROTECTION

SECTION 5. No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

RIGHT TO PRIVACY

SECTION 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest.

SEARCHES, SEIZURES AND INVASION OF PRIVACY

SECTION 7. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

RIGHTS OF CITIZENS

SECTION 8. No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

INDICTMENT: DOUBLE JEOPARDY: SELF-INCRIMINATION

SECTION 10: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against oneself.

TRIAL BY JURY, CIVIL CASES

SECTION 13. In suits at common law where the value in controversy shall exceed one thousand dollars, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury.

RIGHTS OF ACCUSED

SECTION 14. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against the accused; to have compulsory process for obtaining witnesses in the accused's favor; and to have the assistance of counsel for the accused's defense. Juries, where the crime charged is serious, shall consist of twelve persons. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment.

CONSTRUCTION

SECTION 22. The enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

THE CONSTITUTION OF THE STATE OF ALASKA

SECTION 1. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

SECTION 2. All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

SECTION 3. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, or national origin. The legislature shall implement this section.

SECTION 4. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

SECTION 5. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

SECTION 6. The right of the people peaceably to assemble, and to petition the government shall never be abridged.

SECTION 7. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 8. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger.

SECTION 9. No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be a witness against himself.

SECTION 10. Treason against the state consists only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SECTION 11. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve; except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

SECTION 12. Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted.

SECTION 13. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.

SECTION 14. The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

SECTION 15. No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

SECTION 16. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law.

SECTION 21. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

HANDOUT 3
ARTICLES OF RIGHTS

CANADIAN CONSTITUTION

Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

Democratic Rights

3. Every citizen of Canada has the right to vote in an election . . . .

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province.

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Every one has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Any person charged with an offence has the right (a) to be informed without unreasonable delay of the specific offence; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of the offence; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (e) not to be denied reasonable bail without just cause; (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

PHILIPPINES CONSTITUTION

ARTICLE III
BILL OF RIGHTS

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 9. Private property shall not be taken for public use without just compensation.

Sec. 10. No law impairing the obligation of contracts shall be passed.

Sec. 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

Sec. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Sec. 17. No person shall be compelled to be a witness against himself.

Sec. 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

Sec. 10. No person shall be imprisoned for debt or non-payment of a poll tax.

Sec. 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Sec. 22. No ex post facto law or bill of attainder shall be enacted.

ARTICLE V
SUFFRAGE

Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

CHAPTER III.
RIGHTS AND DUTIES OF THE PEOPLE

ARTICLE 10. The conditions necessary for being a Japanese national shall be determined by law.

ARTICLE 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

ARTICLE 12. The freedom and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavour of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

ARTICLE 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

ARTICLE 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honour, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

ARTICLE 15. The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

ARTICLE 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters, nor shall any person be in any way discriminated against for sponsoring such a petition.

ARTICLE 17. Every person may sue for redress as provided by law from the State or public entity, in case he has suffered damage through illegal act of any public official.

ARTICLE 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

ARTICLE 19. Freedom of thought and conscience shall not be violated.

ARTICLE 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.

ARTICLE 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

ARTICLE 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

ARTICLE 27. All people shall have the right and the obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law. Children shall not be exploited.

ARTICLE 28. The right of workers to organize and to bargain and act collectively is guaranteed.

ARTICLE 29. The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

ARTICLE 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

ARTICLE 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

ARTICLE 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33. Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

ARTICLE 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

ARTICLE 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Sec. 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

Chapter II
RIGHTS AND DUTIES OF CITIZENS

Article 9

All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.

Article 10

(1) All citizens shall be equal before the law, and there shall be no discrimination in political, economic, civic or cultural life on account of sex, religion or social status.

(2) No privileged cast shall be recognized or ever established in any form.

(3) The awarding of decorations or distinctions of honor in any form shall be effective only for recipients, and no privileged status shall be created thereby.

Article 11

(1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, interrogated, punished or placed under probationary supervision except as provided by law, or be subject to involuntary labor except by a criminal sentence.

(2) No citizen shall be tortured or be compelled to testify against himself in criminal cases.

(3) Warrants issued by a judge upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search. However, in case a criminal suspect is apprehended flagrante delicto, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an ex post facto warrant.

(4) All persons who are arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as provided by law.

(5) All persons who are arrested or detained shall have the right to request the court to review the legality of the arrest or detention.

(6) In case a confession is determined to have been made against a defendant's will by means of torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in case a confession is the only evidence against a defendant, such a confession shall not be admitted as evidence toward a conviction nor shall punishment be meted out on the basis of such a confession.

Article 13

All citizens shall enjoy freedom of residence and the right to move at will.

Article 14

All citizens shall enjoy freedom of occupation.

Article 15

All citizens shall be free from intrusion into their place of residence. In case of search or seizure in a residence, a warrant issued by a judge upon request of a prosecutor shall be presented.

Article 16

No citizen shall be subject to violation of privacy.

Article 17

The privacy of correspondence of all citizens shall not be violated.

Article 19

(1) All citizens shall enjoy freedom of religion.

(2) No state religion shall be recognized, and religion and politics shall be separated.

Article 20

(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.

(2) Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of other persons, claims may be made for the damage resulting therefrom.

Article 21

(1) All citizens shall enjoy freedom of learning and the arts.

(2) The rights of authors, inventors and artists shall be protected by law.

Article 23

All citizens who have attained to the age of twenty shall have the right to vote in accordance with the provisions of law.

Article 26

(3) All citizens shall have the right to a speedy trial. An accused shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary.

(4) The accused shall be presumed innocent until a determination of guilt has been confirmed.

Article 29

(1) All citizens shall have the right to receive an equal education corresponding to their abilities.

(2) All citizens who have children to support shall be responsible at least for their elementary education and other education as provided by law.

(3) Compulsory education shall be free.

(4) Independence, professionalism and political impartiality of education shall be guaranteed in accordance with the provisions of law.

Article 30

(1) All citizens shall have the right to work.

Article 31

(1) To enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action. However, the right to collective action shall be exercised in accordance with the provisions of law.

Article 32

(1) All citizens shall be entitled to a life worthy of human beings.

(2) The State shall endeavor to promote social security and welfare.

(3) Citizens who are incapable of earning a livelihood shall be protected by the State in accordance with the provisions of law.

Article 33

All citizens shall be entitled to live in a clean environment. The State and all citizens shall have the duty to protect the environment.

HANDOUT 4
INDIGENOUS RIGHTS IN HAWAII

OFFICE OF HAWAIIAN AFFAIRS: ESTABLISHMENT OF BOARD OF TRUSTEES

SECTION 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.

POWERS OF BOARD OF TRUSTEES

SECTION 6. The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians . . . to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians.

TRADITIONAL AND CUSTOMARY RIGHTS

SECTION 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua's tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

HANDOUT 5
NATIONAL GOALS

PHILLIPINES CONSTITUTION NATIONAL GOALS

ARTICLE II
DECLARATION OF PRINCIPLES AND STATE POLICIES

PRINCIPLES

Sec. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Sec. 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Sec. 6. The separation of Church and State shall be inviolable.

Sec. 8. The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

Sec. 10. The State shall promote social justice in all phases of national development.

Sec. 11. The state values the dignity of every human person and guarantees full respect for human rights.

Sec. 12. The state recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception.

Sec. 13. The State recognizes the vital role of the youth in nationbuilding and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Sec. 14. The State recognizes the role of women in nationbuilding, and shall ensure the fundamental equality before the law of women and men.

Sec. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

Sec. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Sec. 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Sec. 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

KOREAN CONSTITUTION ECONOMIC GOALS

CHAPTER IX
THE ECONOMY

Article 120

(1) The economic order of the Republic of Korea shall be based on the principle whereby freedom and creative ideas of the individual in economic affairs are respected.

Article 121

(2) The land and natural resources shall be protected by the State, and the State shall establish a plan necessary for their balanced development and utilization.

Article 124

(1) The State shall establish a plan for the development of farming and fishing villages on the basis of the self-help of farmers and fishermen, and shall strive for the balanced development of regional communities.

Article 128

(1) The State shall strive to develop the national economy, and shall promote and enhance science and technology.

(2) The State shall establish a national standard.

(3) The President may establish an advisory body for the purpose referred to in Paragraph (1).

The Northwest Ordinance: Pattern for Statehood and Equality

William C. Wells

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Napa, California

INTRODUCTION

The focus of this lesson is the growth of American government from an ad hoc provisional Continental Congress to the Federal Constitution. The lesson describes the transfer of legislation from the government under the Articles of Confederation to the government under the Constitution, specifically the Northwest Ordinance. The question often occurs whether there were any positive aspects of government under the Articles of Confederation. This lesson emphasizes that the Northwest Ordinance made a major contribution toward maintaining state-to-state equality. This lesson also seeks to illustrate the ongoing nature of law and legal precedent.

AUDIENCE

Twelfth Grade

TIME TO COMPLETE

Two to three 55-minute periods

GOALS

As a result of this lesson, students will:

- analyze how the Northwest Ordinance was absorbed into the government under the Constitution
- develop critical thinking skills and an understanding of the importance of the precedents established by the Northwest Ordinance
- appreciate that political equality among the states is an essential ingredient of our national system of government

MATERIALS

Handout 1:	Cartoon reprinted in The New York Times Magazine, July 17, 1977
Handout 2:	Northwest Ordinance
Handout 3:	Act for the Admission of California into the Union

PROCEDURES

1. This unit should follow the study of the *Articles of Confederation.*
2. Preceding the discussion of the lesson, distribute the Cartoon, Handout 1, and have students evaluate its significance. Student discussion should focus on the territorial growth of the nation. Students should understand that growth occurred under the Articles of Confederation period but continued under the Federal Constitution.
3. Distribute the *Northwest Ordinance*, Handout 2. Have students read the material.

   The discussion of the reading should focus on these questions:
   - — How does the Northwest Ordinance settle the problems of territorial status and admission to statehood?
   - — What type of territorial government may be created? Describe its structure.
   - — What liberties are guaranteed by the Northwest Ordinance?
   - — How was the Northwest Ordinance absorbed into the laws of the new government when the federal Constitution became the law of the land?
4. Students should now receive a copy of their own state enabling act or California's Act of Statehood.

   Have them read the material and then compare the enabling act to the Northwest Ordinance of 1787.

   Discuss: How does this legislation perpetuate law through precedence and tradition?
5. At the conclusion of the lesson, students should speculate as to current territories of the United States and their right to seek statehood.

EVALUATION

An essay exam is suggested, expecting students to summarize the effects of the Northwest

Ordinance on the writing of the Constitution, the Bill of Rights, and statehood admissions.

A speculative exam could relate to whether Puerto Rico, the Virgin Islands, Guam, etc., have a right to statehood under the provisions of the Northwest Ordinance. A further exploration could be fostered as to the perpetuity of law by having students search for other examples of acts which were absorbed *in toto* by the government under the Federal Constitution.

TIPS FROM THE TEACHER

Teachers are encouraged to familiarize themselves with the use of primary documents. Allow time for student reactions as well as for thorough reading of the material. It is essential that students analyze and respond, thus stimulating and maintaining the discussion.

The following suggestions may help the teacher construct questions to help them manage the use of primary sources.

a. Design questions to elicit student understanding.
b. Construct questions comparing and contrasting the actual language of the documents with interpretation of the document.
c. Ask questions which promote student knowledge.

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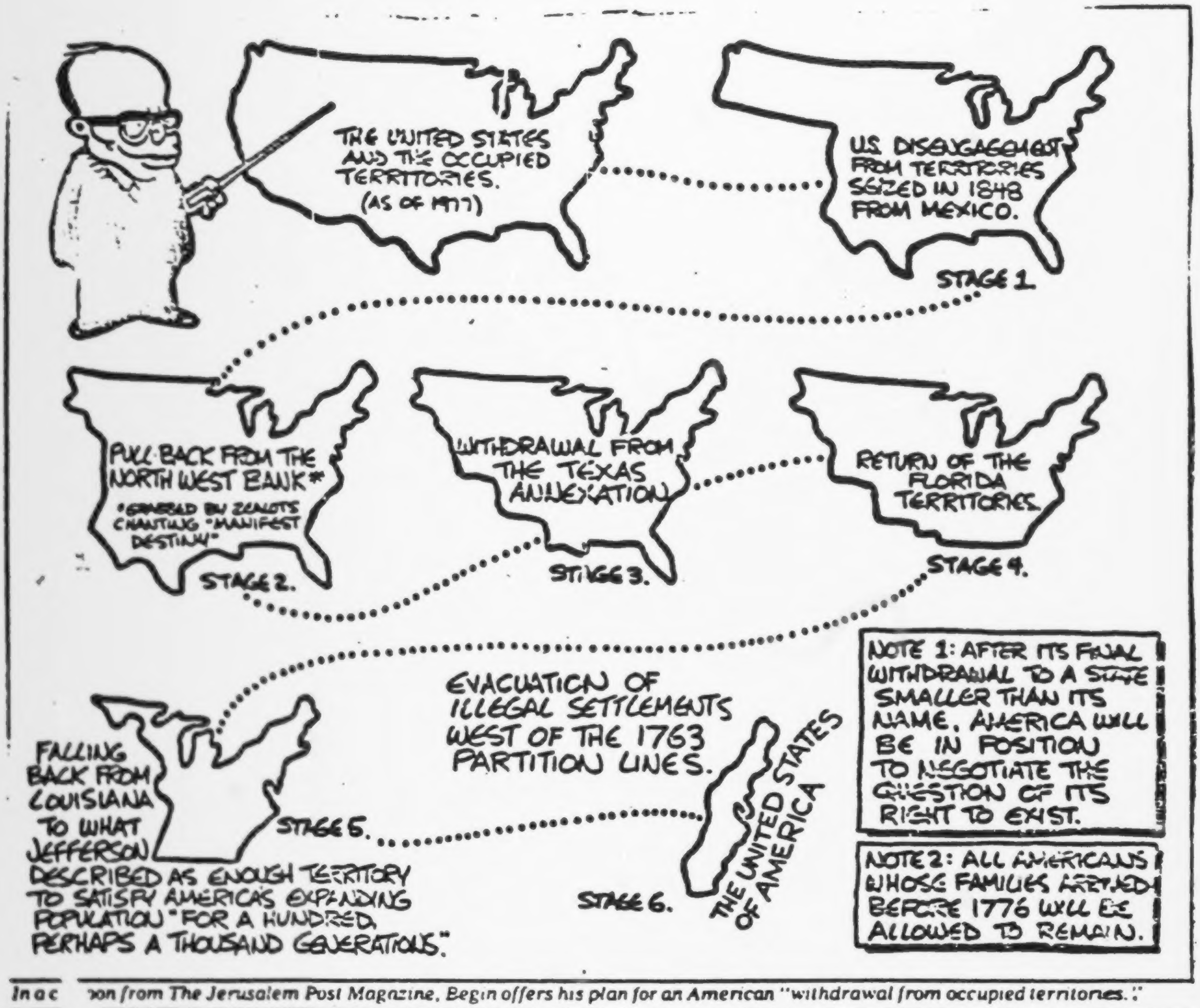
Commager, Henry Steele, editor. *Documents of American History.* New York: Appleton-Century-Crofts, 1948.

Jensen, Merrill, editor. *Constitutional Documents and Records, 1776-1787, Volume 1. The Documentary History of the Ratification of the Constitution.* Madison: State Historical Society of Wisconsin, 1976. (Contains the texts of the Ordinances of 1784, 1785, and 1787 with Jensen's concise editorial comments.)

HANDOUT 1


THE UNITED STATES AND THE OCCUPIED TERRITORIES. (AS OF 1977)
U.S. DISENGAGEMENT FROM TERRITORIES SEIZED IN 1848 FROM MEXICO.
STAGE 1.
PULL BACK FROM THE NORTH WEST BANK*
*SPREAD BY ZEALOTS CHANTING "MANIFEST DESTINY"
STAGE 2.
WITHDRAWAL FROM THE TEXAS ANNEXATION
STAGE 3.
RETURN OF THE FLORIDA TERRITORIES.
STAGE 4.
FALLING BACK FROM LOUISIANA TO WHAT JEFFERSON DESCRIBED AS ENOUGH TERRITORY TO SATISFY AMERICA'S EXPANDING POPULATION "FOR A HUNDRED, PERHAPS A THOUSAND GENERATIONS."
STAGE 5.
EVACUATION OF ILLEGAL SETTLEMENTS WEST OF THE 1763 PARTITION LINES.
THE UNITED STATES OF AMERICA
STAGE 6.
NOTE 1: AFTER ITS FINAL WITHDRAWAL TO A STATE SMALLER THAN ITS NAME, AMERICA WILL BE IN POSITION TO NEGOTIATE THE QUESTION OF ITS RIGHT TO EXIST.
NOTE 2: ALL AMERICANS WHOSE FAMILIES ARRIVED BEFORE 1776 WILL BE ALLOWED TO REMAIN.

In a c on from The Jerusalem Post Magazine, Begin offers his plan for an American "withdrawal from occupied territories."

The New York Times Magazine/July 17, 1977 13

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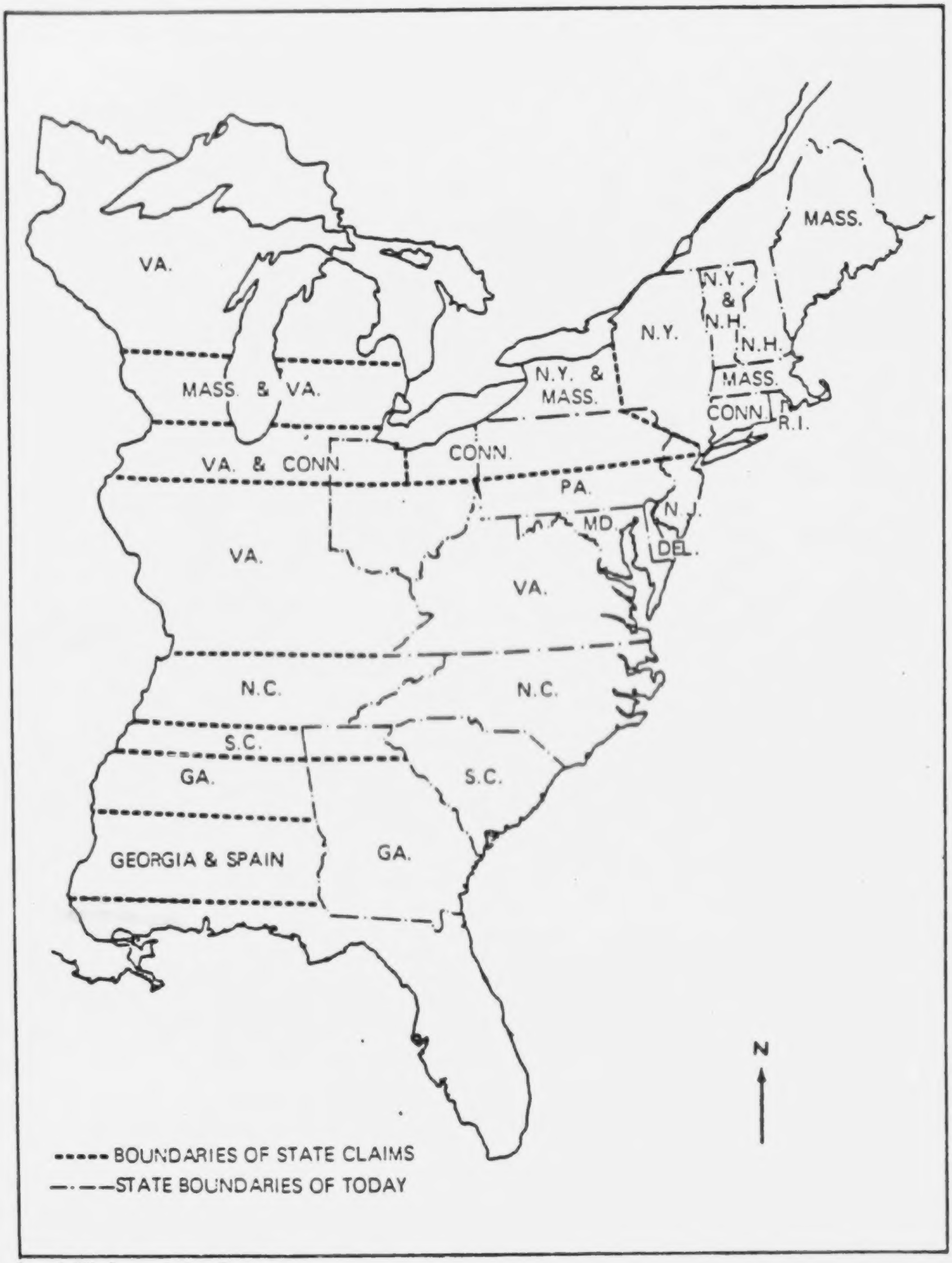
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N
BOUNDARIES OF STATE CLAIMS
STATE BOUNDARIES OF TODAY

Land Claims of the States

HANDOUT 2

NORTHWEST ORDINANCE
July 13, 1787

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE RIVER OHIO

Section 1. Be it ordained by the United States in Congress assembled, That the said Territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts as future circumstances may, in the opinion of Congress, make it expedient.

Section 3. Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years.

Section 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction and reside in the district and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Section 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Section 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Section 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly.

Section 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

Section 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

Section 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent to wit:

ARTICLE I

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.

ARTICLE II

The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishment shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

ARTICLE III

. . . schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE VI

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

HANDOUT 3

ACT FOR THE ADMISSION OF CALIFORNIA INTO THE UNION*

WHEREAS, The People of California have presented a constitution and asked admission into the Union, which constitution, was submitted to Congress, by the President of the United States by message, dated February thirteenth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Section 2. And be it further enacted, That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

Section 3. And be it further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their Legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall nonresident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor. Provided, That nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.**

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* The text here printed is taken from Volume 9, Statutes at Large, page 452.

** The following provision appears in an act approved September 28, 1850. Volume 9, Statutes at Large, page 521: "That all laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of California as elsewhere within the United States."

System of Checks and Balances

Peggy Wilhite

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Vincennes, Indiana

INTRODUCTION

This simulation activity will help students to understand the system of checks and balances. The class will participate in a courtroom situation following group activities and discussions. Preceding lessons will have involved a study of the three branches of the government as well as the Bill of Rights. Students need to develop an understanding of the purpose and structure of the system of checks and balances. Moreover, they need to be aware of and know more about the process used for getting a case reviewed by the Supreme Court. This plan would be utilized in the Social Studies program.

AUDIENCE

Upper elementary Social Studies, grades 4-6, upper elementary gifted

TIME TO COMPLETE

3-4 days

GOALS

As a result of this lesson, students will:

- demonstrate knowledge of the role of the three branches of government
- review the Bill of Rights
- demonstrate decision making skills in working within a group that has a common goal: making a presentation to the Supreme Court

MATERIALS

scale for mobile

room arrangement

chart of checks and balances (3 branches of government)

summarized court cases (to be used optionally)

copy of the Bill of Rights

identification tags for each group

PROCEDURES

1. Review the three branches of government and the responsibilities of each.
    a. Make a class mobile using scale of justice given in appendix.
    b. Put up a chart or bulletin board using chart of checks and balances given in appendix.
    c. Give each student a copy of the chart of checks and balances and review the information with the class.
2. Present a specific case for investigation and presentation by the group. Two cases are herewith summarized, but feel free to pull in any case relevant to your class. Explain to the class that the process they will be following simulates the procedures followed by the United States Supreme Court.
3. Divide the class into four groups (or form as many groups as necessary to accommodate class size).

JUDICIAL
    a. nine Justices
    b. one Marshall (to serve as page)

EXECUTIVE
    a. one spokesperson
    b. one recorder
    c. two-four in the group to help formulate a stand on the case

LEGISLATIVE
    a. spokesperson
    b. one recorder
    c. two-four in the group to help formulate a stand on the case

INTERESTED CITIZENS AS FRIENDS OF THE COURT
    a. spokesperson
    b. one recorder
    c. two-four in the group to help formulate a stand on the case

4. After the class has been divided into groups, allow time for each group to organize.

The group should decide among itself what role each person in the group will take. After the roles have been decided, all should put on prepared name tags. This allows for easy identification during committee work and presentation to the Court.

The groups might benefit by having a copy of The Bill of Rights available for reference.

5. The groups should be given a copy of a court case without the Supreme Court decision and allowed 20 minutes to formulate a position. During this time the teacher will be circulating among the groups to answer questions that might arise. At the end of the work time, the recorders should be given time to write a position for their respective group so that the spokesperson will have notes to refer to during presentation to the Court. Explain that all three branches do not get involved in all cases. Here they are involved because the cases in this lesson represent disputes between the executive and legislative branches of government over the meaning of the Constitution, specifically separation of powers and checks and balances.
6. Questions to be considered by each group should be posted in the respective work areas. They might be:

Judicial:
1. What part of the Constitution would this law refer to?
2. Does this law follow the intent of the Constitution?

Executive:
1. Why does the Executive branch feel this law is/is not necessary?
2. What part of the Constitution would we use to argue for/against this law?
3. What policies does this law carry out?

Legislative:
1. Why does the Legislative branch feel this law is/is not necessary?
2. What part of the Constitution would we use to argue for/against this law?

Interested Citizens:
1. How does this law affect me an individual citizen?
2. On what grounds might I say this law is/is not Constitutional?

7. Set up room for courtroom situation (see appendix).
8. Each group is allowed five minutes to present its stand to the Supreme Court.
9. Allow the Court up to five minutes to make its decision, with the Marshall serving as its recorder. When the decision is made, the Marshall might post it on the board. Afterwards, the Supreme Court members should state why the majority on the Court came up with the particular decision.
10. At this time the teacher can present the Supreme Court's actual decision, then allow time for discussion. Students should have time to discuss what they think about the Supreme Court decision. Time should be allowed for input from the students before bringing this activity to a close.

EVALUATION

1. Ongoing discussions would serve as a valuable evaluation tool.
2. Observation of individuals working in a group.
3. Have each individual develop a word search puzzle as an evaluation of learned vocabulary.
4. Ask a local lawyer to sit in on the day of presentation to the Court and then summarize how well each group reasoned in developing its position.

TIPS FROM THE TEACHER

The books listed in the Bibliography can all be used to review both the system of checks and balances and the Bill of Rights. The copy of the Bill of Rights given to the groups was paraphrased by the class in previous work. Thus, the class was familiar with the first ten amendments.

Filmstrips from the series, "The American Experience in Democracy SVE, 1974, Society for Visual Education, Inc., The U.S. Constitution," have been used and discussed in a previous mini-unit. In previous work, the class had, thrrough round robin discussions, come up with several points which they kept in mind as they worked together.

Those being:

1. Not everyone interprets the laws the same. People look at issues differently and are influenced by their background.
2. It is hard to write laws that are fair to everyone.
3. Laws are written to protect us, but we must act responsibly.

Also, call upon the local law society for aid in finding particular cases that could be used by the class.

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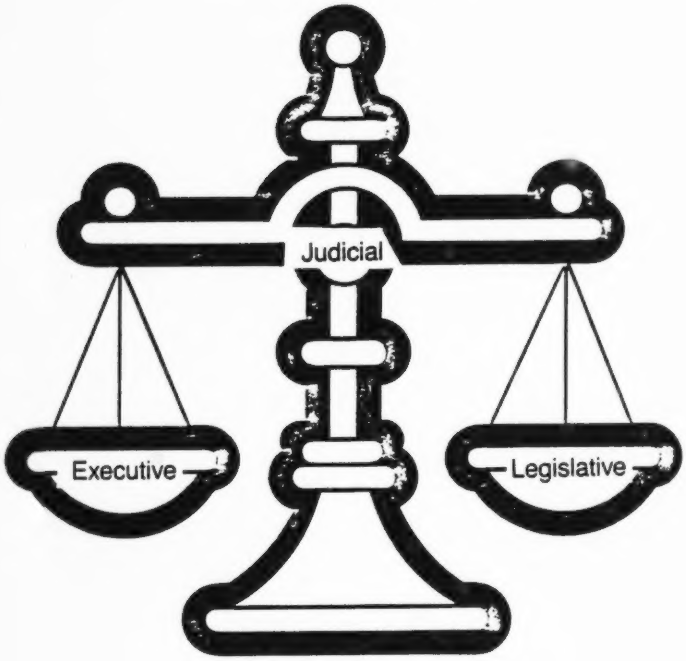
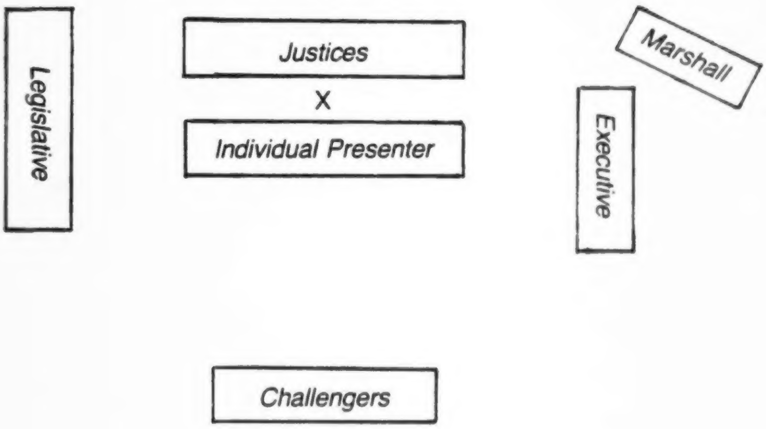
HANDOUT 1

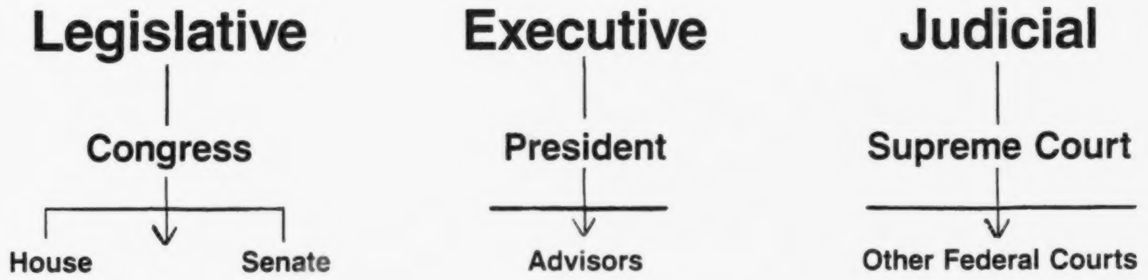
Scale of Justice


Judicial
Executive
Legislative

Room Arrangement


Legislative
Justices
X
Individual Presenter
Marshall
Executive
Challengers

Three Branches of Government



Legislative

Congress

House **Senate**

Executive

President

Advisors

Judicial

Supreme Court

Other Federal Courts

Creates federal courts, approves appointments of justices, may impeach justices, may propose constitutional amendments to override decisions of Supreme Court

Passes laws, may override vetoes, confirms presidential appointments, approves treaties, may impeach President

Appoints justice, grants pardons

Approves / vetoes bills, may call special sessions of Congress, may recommend legislation, sees that laws are enforced, makes treaties

Interpret laws and treaties

Decide whether laws are constitutional

HANDOUT 3

Bill of Rights

1. The Congress may not make laws that take away the freedom of religion, freedom of speech, freedom of the press, or the right of people to meet together in a peaceful way or to ask the government to correct problems in the country.
2. Citizens have a right to keep and bear arms, subject to laws of the states.
3. The government cannot make citizens keep soldiers in their homes.
4. A person cannot be arrested and searched nor can his home be searched without certain procedures being followed.
5. People accused of a crime must be given a fair trial. They must be allowed a trial by jury. If the person is found guilty, the punishment must be fair. The government must follow certain procedures before a person's life, freedom, or property may be taken away.
6. If a person is accused of a serious crime he has a right to a speedy and public trial. He has a right to a lawyer and he has a right to see and question those he feels are speaking for or against him.
7. In most disagreements, there is a right to a jury trial.
8. Punishment for a crime may not be cruel or unusual.
9. Citizens have other rights that are not listed or explained in the Constitution.
10. States or citizens retain all powers that have not been given to the central government.

"The Body and Soul of the Law": Discrimination and Civil Rights in the 19th and 20th Centuries

Mary Louise Williams

Los Alamos High School
Los Alamos, New Mexico

INTRODUCTION

This lesson examines the legal concern, during two periods in American history, over private acts of discrimination on the basis of race. The lesson involves learners in analysis and comparison of the constitutional arguments of two Supreme Court cases—the Civil Rights Cases of 1883 and *Heart of Atlanta Motel, Inc. v. United States*, 1964—which challenged congressional acts outlawing private discrimination against individuals based on race. The focus of the lesson encourages students to formulate arguments from different perspectives by studying the legal issues in their historical setting. Students are encouraged to distinguish between the "letter of the law" and the "sense and reason of the law" and to determine the social and political consequences when "sense and reason" are removed from the judicial process. For purposes of evaluation each student is asked to write two papers: 1) a position paper developed in preparation for oral arguments for moot court activities, and 2) a "judicial decision" based on findings of the moot courts.

AUDIENCE

American History, Senior Law Classes, Advanced Placement History

GOALS

As a result of this lesson, students will

- understand how the Fifth, Thirteenth, and Fourteenth Amendments and the Commerce Clause framed the legal issues in the civil rights cases in 1883 and 1964
- apply the knowledge of historical and political perspective in analyzing laws and cases
- compare application of the concepts, "the letter of the law" and "the sense and reason of the law," to Supreme Court cases during two historical periods
- evaluate the impact of Supreme Court rulings on the social and political lives of citizens
- develop an understanding of the personal and social effects of private acts of discrimination based on race, color, and ethnic background

MATERIALS:

Handout 1:	Introduction to Private Acts of Discrimination: A Personal Story
Handout 2:	The Historical Setting—1870's and 1880's
Handout 3:	Supreme Court Decision—Civil Rights Cases (1883)
Handout 4:	Historical Setting—1960's
Handout 5:	Supreme Court Decision—Heart of Atlanta Motel v. United States (1964)

PROCEDURES

1. Duplicate all Handouts for each student.
2. *Read aloud to the students the first four paragraphs of Handout 1* as an introduction to the activity. Briefly discuss this actual experience of the Youngs and how they must have felt. Should this kind of discrimination be legal in our society? What about the rights of the motel owner?
3. *Then pass out a copy of Handout 1 to each student.* Read together THE CONSTITUTIONAL PROVISIONS USED TO CHALLENGE THE LAWS. Ask the students whether any of these provisions provide legal protection for the Youngs against private acts of discrimination such as they experienced. What about the Fourteenth Amendment? If blacks are citizens as the Fourteenth Amendment says, what about their privileges and immunities? Due process rights? Equal protection rights? What is the key word in the fourteenth? Does it say that individuals may not discriminate? No, it says ". . . no state shall make or enforce any law nor deprive any person . . . ." What about Amendment V? Remember that Amendment V is a prohibition

against the *national government*. Who was doing the discriminating? Continue reading the rest of Attachment 1 beginning again with the fifth paragraph. What is meant by "the letter of the law" and "the sense and reason of the law"? (The "letter" is exactly what is written. The sense and reason is the spirit of the law or the unstated logic, rationale, or principle behind the law.)

4. To initiate interest in the lesson, list the three topics below on the board. Ask students to work in pairs to create a list of rights which would illustrate each topic. (Use examples below as a guide)

Economic Rights

make contracts
own property
sue and be sued

Political & Legal Rights

give evidence
hold public office
vote

Social Rights

marry
access to public accommodations

Record student responses on the board and discuss the reasons for their choices. Next, explain that civil liberties have historically meant the Bill of Rights. Today, civil rights and civil liberties are used interchangeably, and they embrace economic, political, and social rights. In the 1860's it was a different matter. Civil rights meant basically one's economic rights which were legally protected. Political rights were considered to be in the nature of privileges that were enjoyed but not necessarily legally protected. Social rights were a matter of personal taste and prejudice. No one considered it the business of government to concern itself with discrimination against individuals because of their color or gender. This was regarded as a social preference. The Thirteenth Amendment marked the beginning of modern civil rights law and policy.

5. *Divide the students into four groups.* Groups One and Two will work on the Civil Rights Cases of 1883 and will receive copies of Handout 2. *Group One* will be attorneys for the United States government, the petitioner or *Appellant* asking for a reversal of a lower court decision. *Group Two* will be attorneys for the respondents or *Appellees*, individuals who had discriminated against black patrons and against whom the appeal was made.

   Groups Three and Four will be responsible for the Heart of Atlanta Motel, Inc. v. U.S. (1964). *Group Three* will be the attorneys for the owners of the motel who are the *Appellants* who challenge the constitutionality of Title II of the Civil Rights Act of 1964. *Group Four* will be attorneys for the *Appellees*, the United States government. Give out Handout 4 to these groups only. Handouts 2 and 4 provide specific information which should not be shared with the other groups at this point in the lesson. This information is to be used in preparing oral arguments and position papers. The oral arguments will be presented to the "Supreme Court." In other words, Groups 3 and 4 will act as a Supreme Court for Groups 1 and 2 on the first day(s) of presentation and Groups 1 and 2 will be a Supreme Court for Groups 3 and 4. The preparation of position papers will help clarify what their arguments should be. If class enrollment makes the Supreme Court too large, use the extra students as journalists and have them write newspaper accounts.

6. *Place the students in their groups and have them begin work on their cases.* The students must judge whether their law is constitutional according to the 5th, 13th, and 14th Amendments and the Commerce Clause in Article I. They are to consider the constitutionality of the Statutes based on the issues discussed in Handout 1. Tell the students they may also determine constitutionality by considering "the letter of the law" or "the sense and reason of the law." Explain that the *law* becomes a *case* when someone challenges the constitutionality of the law itself or actions taken. In preparing arguments the attorneys must look at *Case Law*, previous decisions handed down by the Supreme Court which act as *precedents*. Explain to the students by writing on the board or transparency that the *position papers* will include the following: (1) a statement as to whether you believe the case to be constitutional; (2) support for your position based on reasons cited from the Fifth, Thirteenth, and Fourteenth Amendments and the Commerce Clause in Article I; (3) support based on the historical setting which might have *influenced*

your decision had you lived in that time period.

7. After the preparation phase, tell students that *presentations to the Supreme Court are divided as follows*:
   (1) Appellant's Introduction (explanation of the case in its historical context)
   (2) Appellant's Arguments (two or more students give separate arguments)
   (3) Appellee's Introduction
   (4) Appellee's Arguments
   (5) Appellant's Rebuttal
8. *Oral Arguments of the Civil Rights Cases Before the Supreme Court.* Groups 3 and 4, acting as a Supreme Court, will listen to the arguments presented by Groups 1 and 2 and make a decision based on a majority vote. (It is suggested that the Supreme Court be given a copy of Handout 2 to be read as homework the night before. It is necessary to understand the historical setting.) Stress that the *Supreme Court must think in terms of the 1880's, not the 1980's.* Also stress to the Supreme Court that the federal government has grown very powerful during the Civil War. This was reversing the 19th century trend of increased state authority as the number of states increased, the nation expanded westward, and the federal government grew more remote and further away. It was to the functions and services of state governments that most people turned. The Supreme Court was well aware of this and wanted to restore the state-federal balance of power. It had been regularly limiting federal authority in its decisions.
9. *Each member of the Supreme Court will then provide his/her decision as a written statement* with the reasoning and constitutional justification included. *Each student* will write either a *Concurring Opinion* or *Dissenting Opinion.* You will *then compare their decision with the actual decision.* Hand out Attachment 3 to each student and go over carefully for discussion and analysis of the actual Supreme Court reasoning and constitutional justification.
10. *Oral Arguments of the Heart of Atlanta Motel, Inc. v. U.S. Before the Supreme Court.* The Supreme Court, Groups 1 and 2, will listen to the arguments presented by Groups 3 and 4. (It is suggested that Attachment 4 be given to the Supreme Court before the oral arguments.) The Supreme Court has to determine whether the power to regulate actions defined as interstate commerce is within Congress's power or not. Commerce has been defined by previous Courts as buying and selling, the interchange of commodities, any kind of exchange, communication, or commercial intercourse which can include persons. Interstate commerce can include activities intrastate which might affect interstate commerce or Congress's exercise of it. The Court must decide if that power can include regulating local incidents and activities occurring within states that might affect interstate commerce.

    Have students think carefully about the following questions: Does forcing someone to rent a room to another on the basis of race cause a loss of property as defined in the 5th Amendment? What is the effect on the human dignity of blacks? How do the 13th and 14th Amendments consider the moral question of segregation?
11. The Supreme Court will then provide its decisions as a written statement following procedure described in 9. Hand out Attachment 5 to each student and compare decisions, etc.
12. Debrief the lesson as a means of measuring achievement of the objectives of the lesson. Following are suggestions for debriefing questions.
    1) Did the four groups consider the letter and/or the sense and reason of the law in addressing the Civil Rights Act of 1875? Why or why not?
    2) Did the actual decision consider the "sense and reason" of the 14th Amendment? Why or why not?
    3) Why was the Commerce Clause used for the constitutional authority in the Civil Rights Act of 1964? Doesn't that seem a strange route to go in the Constitution to get at individual discrimination? Was it effective?
    4) Did the decision in the Heart of Atlanta Motel attempt to get at the sense and reason?
    5) What effect, if any, did the historical setting have on the two decisions? Aren't the justices of the Supreme Court supposed to be operating independent of the societal demands around them?
    6) What has been the most important lesson you have learned from this unit?

EVALUATION: Evaluations can be based on:

1. the assigned position papers developed in preparation for oral arguments for moot court activities
2. oral arguments
3. a written "judicial" decision based on findings of the moot court

TIPS FROM THE TEACHER

Any part may be used separately. For example, the procedure described in Part 7, 4. is a lesson within itself. One could use only the section on the Civil Rights Act of 1875 alone or the Civil Rights Act of 1964. The arguments have been provided as a guide. Better students could develop their own if possible.

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HANDOUT 1

INTRODUCTION TO PRIVATE ACTS OF DISCRIMINATION: A PERSONAL STORY

(1) The motel sign blinked "VACANCY." Jim, Elaine, and son, Chip, turned in and stopped the car's engine. Jim stretched himself out of the car to his height of over six feet. Handsomely dressed in a lightweight wool sport jacket, he asked Chip to hand him his wallet out of the pocket of his raincoat carelessly tossed in the backseat. His voice was rich and resonant with a speech pattern and word choice joltingly correct.

(2) The family had just returned from a year in Copenhagen where Jim was doing research at the Niels Bohr Institute, one of the most prestigious physics facilities in the world. He was driving west to resume his position as a theoretical physicist at Los Alamos National Laboratory in New Mexico, the birthplace of the atomic bomb. Elaine would return to teaching mathematics in the public schools. This was their first night back in the United States after a wonderfully free year of Danish hospitality and European travel.

(3) Jim walked up to the motel desk and asked for rooms, a double and a single. The man behind the desk stared at him for several seconds and said, "I'm sorry, we're full up for the night." "But, may I point out, your VACANCY sign is on." Angrily the man replied, "I told you that we're full. Now, git out!" Jim thought to himself as he returned to the car, "Welcome back to the United States, nigger!!"

(4) Jim Young was the first black in the history of Massachusetts Institute of Technology to receive a Ph.D. in theoretical physics. Brilliant and highly respected by his colleagues, his professional credentials were the envy of many. Elaine held an M.S. in mathematics and was considered to be an outstanding teacher in Los Alamos. But they were black. That fact was all that was necessary to provide reason for private acts of racial discrimination against them and their son in the 1950's and early 60's.

(5) Today, the individual discrimination as experienced by the Youngs is no longer legal. But, then, it wasn't supposed to be legal in 1875! The Fourteenth Amendment, ratified in 1868, had been the constitutional basis for congressional legislation that came later such as the *Civil Rights Act of 1875*. This act was attempting to make illegal private acts of discrimination against blacks in hotels and inns, restaurants, public conveyances (river boats, trains, etc.) and amusement facilities. The Congress of the 1870's had been determined to secure these *social rights*.

(6) But could the Civil Rights Acts of 1875 make such a violation of social rights illegal in 1875 based on the wording of the 13th and 14th Amendments of the Constitution? Was it illegal in the early 1960's when the Youngs were subjected to it? Was it really necessary to once again enact a law against private acts of discrimination in 1964? In answering these questions, this activity explores the legal history of private acts of discrimination against individuals on the basis of race (a violation of social rights) from 1875 to 1964.

(7) The underlying theme of this lesson comes from the words of Supreme Court Associate Justice John Marshall Harlan written over a hundred years ago.

> It is not the words of the law but the internal sense of it that makes the law: the letter of the law is the body; the sense and the reason of the law is the soul.

What do you think this quotation means? As you study the material in this lesson you will learn how the branches of government, as well as the states, interpreted the letter of the law during the 1870's and 80's. It will help you understand how this narrow interpretation created a distortion of reason and sense of the 13th and 14th Amendments. The "body" remained but the "soul" was removed. Lastly, you will examine the reason for the new civil rights law in 1964, a new avenue for interpreting constitutionality. You will see that with a new reason and sense the law became whole again; the soul was restored.

The Constitutional Provisions Used to Challenge the Laws

AMENDMENT XIII (1865)

SECTION 1. Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV (1868) (relevant section only)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

COMMERCE CLAUSE, ARTICLE 1, SECTION 8, PARA. 3.

Congress shall have power: To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

AMENDMENT V

No person . . . shall be deprived of life, liberty, or property, without due process of law; . . . nor shall private property be taken for public use, without just compensation.

ISSUES OF THE LESSON TO HELP IN DETERMINING CONSTITUTIONALITY OF CIVIL RIGHTS ACTS OF 1875 and 1964

1. Does the wording of these constitutional provisions provide protection for an individual against private acts of discrimination based on race? Look particularly at the 14th.
2. If not, should a law be written which more specifically addresses the problem of private acts of discrimination?
3. Would the law be constitutional based on the wording of the 13th and 14th Amendments?
4. Do private acts of discrimination constitute involuntary servitude?

HANDOUT 2

THE HISTORICAL SETTING—
1870's and 1880's

Radical Reconstruction which began in 1866 is bringing changes in the political, economic and social structure of the South. The Ku Klux Klan has been organized since 1867 to use intimidation against blacks to discourage their participation in the public affairs of the states. But since the Republicans have been in power for seven consecutive Congresses up to 1876, genuine concern for the new black citizens has caused ratification of constitutional amendments and enactment of several laws designed to protect black rights and to curb white extremists.

Since it has been generally accepted that the states are the main source of civil rights and personal liberty, the 14th Amendment has been ratified to grant both national and state citizenship rights to blacks. By so doing it is hoped the national government can better protect the rights of black citizens since historically it has been and is expected to be the states that will be the problem.

To further arm the blacks with a means of protecting their own rights, the 15th Amendment has been ratified forbidding the denial of the right to vote on a basis of race. Black voters, as a result, vote Republican contributing to that party's continued control. The promise of economic security and political equality are now in legal existence.

But one final concern remains: private acts of discrimination against individuals on the basis of race. Shouldn't there be federal protection for social rights? To insure this protection, the Civil Rights Act of 1875 has been passed.

In the presidential election in 1876, a crisis has formed over the electoral votes of four states. The Republicans claim they have retained the presidency with these votes, while the Democrats swear they have carried the four disputed states, thus winning the presidency with their candidate, Samuel J. Tilden.

A compromise has been worked out with the Southern Democrats. The Democrats have allowed Rutherford B. Hayes, the Republican, to have the presidency. In return, the Republicans have made several unwritten agreements. There will be an immediate end to military reconstruction and the restoration of home rule. The North will stay out of the "Negro problem" in the South; the whites will write the rules governing their relations with the blacks, meaning limited political and social equality.

So, in 1877 federal troops have been withdrawn from the South, leaving the rights of the blacks protected by the constitutional amendments and civil rights laws. Would the letter of the law be enough with the return of white rule?

The Law—THE CIVIL RIGHTS ACT OF 1875

It had the following provisions: (Only relevant part included)

> SEC. I. BE IT ENACTED, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land and water, theatres, and other places of public amusement . . .
>
> SEC. 2. That any person who shall violate the foregoing section . . . shall pay five hundred dollars to the person aggrieved thereby . . . and [be] imprisoned not less than thirty days nor more than one year . . .

HANDOUT 3

SUPREME COURT DECISION—
CIVIL RIGHTS CASES 1883

In an 8 to 1 decision the APPELLANTS lost and the Supreme Court struck down as unconstitutional the most important parts of the Civil Rights Act of 1875. They could find nothing within the 13th and 14th Amendments that would give authority to the act.

"Rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws. . . . The wrongful act of an individual . . . is simply a private wrong, or a crime of that individual; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress." In other words, if one were discriminated against, one would have to go to the State for any correction of the wrong. The States had been the problem in the first place, which is why the 14th Amendment was enacted—to counter actions or non-action of the State.

The Court denied that a refusal of an innkeeper to rent a room on the basis of race was "involuntary servitude," thus rejecting that the 13th had been violated. "It would be running the slavery argument in the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain or as to the people he will take into his cab. . . . Mere discrimination on account of race or color were not regarded as badges of slavery."

Justice John Marshall Harlan, dissenting (He dissented alone): He denied the lack of authority in the 13th and 14th Amendments. "Exemption from race discrimination in respect of the civil rights which are fundamental in citizenship in a republican government is . . . a new right, created by the nation, with express power in Congress, by legislation, to enforce the constitutional provision from which it is derived." He went on to stress that the states still have the same authority to define and regulate civil rights. But now its exercise is the subject of enforcement through the national government to make sure that exemption of citizens from discrimination is protected.

In strong words, Harlan rejected that the 13th didn't apply. What Congress had sought with the 13th was to accomplish "what had been done in every State . . . for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more . . . to make the rank of mere citizens."

He then referred to the Commerce Clause, leaving open a suggestion that would be taken up by a more determined people in a more determined time. "Might not the act of 1875 be maintained in that case, as applicable at least to commerce between the States. . . . I suggest, that it may become a pertinent inquiry whether Congress may in . . . its power to regulate commerce among the States enforce . . . quality of rights, without regard to race, color or previous condition of servitude. . . ."

The Case—CIVIL RIGHTS CASES (1883)

In four instances, acts of discrimination were made in the late 1870's and early '80's in inns, theaters, and public transportation in violation of the Civil Rights Act. Five separate cases went to the Supreme Court, but only the cases relevant to this lesson will be examined. The United States was the Petitioner or APPELLANT, and the Respondents or APPELLEES were a Mr. Stanley and Mr. Nichols, who were in violation by "denying to persons of color the accommodations and privileges of an inn or hotel."

These cases are asking whether or not the above actions are violations of the 13th and 14th Amendments. The 13th forbids all kinds of involuntary servitude and acts of discrimination as a badge or incident of slavery. It violates the 14th, which grants rights, privileges, and immunities to blacks. Congress has the power to protect these rights.

Case Law—The law as defined by previously decided cases

SLAUGHTER HOUSE CASES (1873)

This decision was the first interpretation of the meaning of the 14th Amendment. It stressed that the 13th, 14th, and 15th Amendments had one underlying purpose—of giving citizenship rights to the former black slaves. State citizenship rights were separate from those of the federal government. (Dual citizenship) The states protect the rights of the citizens of the states; thus, the federal government could only protect the federal citizenship rights (left undefined). Thus, the former slave states were assigned the protection of the new state citizenship rights of the former slaves.

UNITED STATES V. CRUIKSHANK (1876)

In this case the Court further stressed that, "The fourteenth amendment . . . adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society." In other words, if the new black citizen already had citizenship rights, the state couldn't take them away. But if he didn't, then the 14th couldn't grant them to the new citizen.

Only the state!

HALL v. DeCUIR (1877)

"There can be no doubt but that exclusive power has been conferred upon Congress in respect to the regulation of commerce among the several States. The difficulty has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it; . . . But we think it may safely be said that State legislation which seeks to impose a direct burden upon inter-state commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. . . ." Does discrimination in inns and restaurants inhibit interstate commerce in any way?

ARGUMENTS FOR THE APPELLANT:

(Group One, attorneys for the U.S. Government) Use the following arguments to help in the preparation of your case:

The denial of accommodations of an inn inflicts a badge of servitude (humiliation) as well as denial of personal liberty which is a form of slavery in violation of the 13th Amendment. Personal liberty consists in the power of changing one's situation or taking oneself or person to whatever place one may wish, without restraint. How can one move freely if one cannot use overnight accommodations and restaurants wherever available?

The 14th Amendment was the first instance in which Congress had the power to enforce an express prohibition upon the states. The 14th granted blacks both state and federal citizenship. Therefore, exemption from race discrimination with respect to civil rights, fundamental to citizenship, was within the power of Congress to regulate. States possess the same authority which they have always had: the power to define and regulate the civil rights of their own people. Except, now, its exercise is subject to regulation by Congress through powers granted in the 14th Amendment and the Civil Rights Act.

All one has to do is look at the historical framework for the ratification of the 14th Amendment as well as the Civil Rights Act of 1875 to understand the sense and reason for them. They were intended to give power to the national government to intervene in situations where black rights were being violated, particularly in cases of private acts of discrimination where blacks only have the law to protect them. Without the federal government there to support the law, blacks are helpless before the white majorities.

ARGUMENTS FOR THE APPELLEE:

(Group Two, attorneys for the individuals who discriminated, Mr. Stanley and Mr. Nichols) Use the following arguments to help in the preparation of your case.

You will argue for "states rights." The Civil War has strengthened the power of the national government, but the states are determined to regain their power. Civil Rights step into the domain of local and state government by laying down rules for the conduct of individuals in society toward each other. As the closest government to the people, the states, not the national government, have the right to define civil rights for the people. They have historically set voter qualifications and rights of their state citizens. Congress has no authority to intervene in this area. The national government can exert power over the states but has no right to impose its will on the citizens of that state.

The 13th and 14th Amendments do not give the federal government the power to establish regulations about discrimination in hotels and inns. The 13th Amendment refers to actual slavery. How can denying a black a room in an inn or a seat in a restaurant place a "badge of servitude" on him? If he chooses to interpret it that way, that is his choice, not that of the innkeeper.

The state government is the closest government to the people. The 14th Amendment prohibits states from discriminating against individuals; it does not and cannot protect against discrimination by individuals. If one citizen chooses not to hold social intercourse with another, he is not and cannot be in violation of the 13th nor 14th Amendments. It is a matter of individual taste and choice, not governmental regulation. Private acts of discrimination which a person may see fit to make as to the guests he will entertain in his inn or as to the people he will admit into his restaurant, etc., can only be remedied by the state government, not the federal.

To force an innkeeper or owner of a restaurant to serve Negroes would cause him to lose much business from the white clientele. Therefore, loss of business would be loss of property without just compensation, as well as a loss of his "liberty" of choice, a violation of the 5th Amendment.

HANDOUT 4

HISTORICAL SETTING—1960's

As a result of Supreme Court decisions, such as the Civil Rights Cases of 1883 which gave support to Jim Crow laws, segregated society became fact in America. Plessy v. Ferguson of 1896 cemented the practice with its "separate but equal" decision. Therefore, there were separate schools, drinking fountains, waiting rooms, sections on trains and buses, graveyards, mortuaries, churches, even armies fighting in World War II. For all practical purposes, their economic, political, legal, and social rights were nonexistent. White America had forgotten blacks were even here. And when whites did remember, it was to participate in lynchings, acts of intimidation, humiliation, and degradation.

During the 1930's Eleanor and President Roosevelt took steps to force white America to remember its black citizens, the segment of the society hardest hit by the depression. Blacks were appointed to senior government posts and relief was fairly apportioned to the one out of two unemployed black workers.

President Harry Truman made the first assault on civil rights issues with his Justice Department. It entered civil rights cases, filed by the NAACP (National Association for the Advancement of Colored People), as a "friend of the court." Truman forbade segregation in the military and ordered an end to racial discrimination in federal employment and government contracting.

The historic ending of school segregation came with Brown v. Board of Education of Topeka in 1954. The blacks ended segregation on buses in Montgomery, Alabama, with a boycott. Student sit-ins at lunch counters attacked segregation in public eating places. The University of Mississippi, historic bastion of white supremacy, was forced to admit James Meredith, its first black student. Martin Luther King, Jr., black civil rights leader, led a peaceful march of a quarter of a million people to Washington, D.C., and spoke eloquently for the cause of the black citizens. The date was August, 1963. White America had become profoundly aware of Black America.

But no major legislation in regard to civil rights had been enacted for over 82 years. In June 1963, President John F. Kennedy called on Congress to provide legislation to address all forms of individual discrimination. Its stated purpose was "to promote the general welfare by eliminating discrimination based on race, color, religion, or national origin in . . . public accommodations, . . . to enforce the provisions of the fourteenth and fifteenth amendments, to regulate commerce among the several States. . . ."

JFK was assassinated the following November. President Johnson, returning from Dallas shortly after taking the oath of office, made the decision on Air Force One to go "all the way" on civil rights. Five days after the assassination Johnson told a joint session of Congress that passage of the Civil Rights Act would be the greatest tribute they could make to honor President Kennedy's memory.

The Law—THE CIVIL RIGHTS ACT OF 1964

The Civil Rights Act was signed into law by President Johnson on July 2. Since Title II is the part of the act constitutionally challenged, that is the only part quoted. (Only the relevant portions have been included.)

> SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.
>
> (b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:
>
> > (1) any inn, hotel, motel, . . . which provides lodging to transient guests, other than an establishment . . . which contains not more than five rooms for rent . . . and which is actually occupied by the proprietor . . . as his residence;
> >
> > (2) any restaurant, cafeteria . . .;
> >
> > (3) any motion picture house . . .;
>
> (c) . . . any "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State. . . .

The Case—HEART OF ATLANTA MOTEL, INC. V. UNITED STATES (1964)

The Appellant, the owner of a large motel in Atlanta, Georgia, sued to have Title II of the law struck down as unconstitutional. The owner restricts his clientele to white persons, three-fourths of whom are interstate travelers. He has 216 rooms available to transient guests and is conveniently located near two interstate highways and two state highways. There is national advertising to solicit business through national magazines and 50 billboards and highway signs within the State. Approximately 75% of the registered guests are from out of state, which includes convention trade.

The appellant maintains that Title II of the Act exceeds Congress' power to regulate commerce and thus violates the Commerce Clause under Art. I, Sec. 8, cl. 3.; that the Act violates the 5th Amendment by depriving the owner of the right to choose his customers and operate his business as he pleases, thus taking liberty and property without due process of law and taking property without just compensation; and that being forced to rent available rooms to Negroes against his will subjects the appellant to involuntary servitude in violation of the 13th Amendment.

Case Law—The Law as defined by previously decided cases

No cases of importance since
the Civil Rights Cases (1883)

ARGUMENTS FOR THE APPELLANTS:
(Group Three, attorneys for the owners of the Heart of Atlanta Motel) Use the following arguments to help in the preparation of your case.

The transfer to the national government of the power to determine civil rights is a violation of federalism and of the balance of power between state and federal governments. This is just another attempt by the national government to take over powers granted to the states. Civil rights have historically been the responsibility of the states. The Court has repeatedly said that the 14th allows only the states to regulate the behavior of its citizens. Besides, there is no need for such national legislation because 32 states have statutes concerning civil rights. When all the states decide such legislation is needed, then there will be 50.

The Commerce Clause never gave the national government the right to regulate local incidents and local activities. The choice of to whom one wishes to rent rooms or to serve food is a matter of personal taste and is not the business of the federal government.

The national government cannot force the issue; otherwise, a citizen is being deprived of his 5th Amendment rights of "liberty" of choosing patrons. To take that away is forbidden without due process of law. When citizens are forced to rent to or serve blacks, their white clientele stop patronizing them and they start losing money. This causes a loss of "property" or economic well being and constitutes the taking of property without just compensation.

ARGUMENTS FOR THE APPELLEES:
(Group Four, attorneys for the U.S. Government) Use the following arguments to help in preparation of your case.

Congress held hearings in both Houses as to the burdens of discrimination and its effect upon interstate commerce. Since the failure of the Civil Rights Act of 1875 was based on federal claims that the 13th and 14th violated black rights and federal rights to protect them, you will avoid using that as the basis for your arguments. Instead, the law specifically deals with inns and restaurants that cater to interstate commerce; thus, use the Commerce Clause as your main constitutional argument. Don't forget that people travelling from one state to another would qualify as interstate commerce. Congress, in the exercise of its power to regulate commerce among the several states, has the power to regulate traffic of persons who travel from state to state, and thus becomes a part of interstate commerce.

U.S. citizens have become increasingly mobile. Millions of people of all races are traveling every year. Blacks have been subject to humiliating discrimination, causing them to have to travel selectively in areas where they know they can find motels and restaurants that will serve them. Blacks have special guidebooks because of this problem. Doesn't this hurt commerce and interstate travel, since they cannot go where they want to and stay where they want to? The same thing is true for restaurants. If the food served comes from within the state, then it would not be interstate. But if a significant portion comes from without, then it is interstate commerce.

Innkeepers may be defined as a sort of public servant, as agents or instrumentalities of the state. When a person devotes his property to a public use, he, in effect, is granting the public an interest in that use since it can affect the community at large. They have licenses granted them to operate their businesses, giving them special privileges. Therefore, they are charged with certain duties and responsibilities to the public. The public nature of the employment forbids discrimination against any person on account of race or color. The innkeeper must submit to control by the public for the common good. He has the choice of withdrawing his property from public use, thus removing his property from public interest and public control. But so long as he maintains the use, he must submit to the control. No property is being taken, only regulated consistent with the powers granted to Congress in the 14th. Thus, no 5th Amendment rights are violated.

HANDOUT 5

DECISION—HEART OF ATLANTA MOTEL v. UNITED STATES 1964

The Supreme Court upheld Title II of the Civil Rights Act of 1964 as constitutional, "a valid exercise of Congress' power under the Commerce Clause as applied to a place of public accommodation serving interstate travelers." The Court denied all other grounds of the Appellants.

It pointed out that the decision handed down in the civil rights cases of 1883 was not applicable because the "Court did not fully consider whether the 1875 Act could be sustained as an exercise of the commerce power." They determined that the test of the exercise of the power of Congress under the Commerce Clause is simply "whether the activity sought to be regulated is 'commerce which concerns more States than one' and has a real and substantial relation to the national interest." The Court then proceeded to prove that denying people accommodations in motels because of race fell under the definition in that of "approximately 20,000,000 Negroes in our country," many are able to, and do, travel among the states in automobiles.

Through concurring opinions, the 13th and 14th Amendments were again focused upon as constitutional authority against discrimination. Justice Douglas stated, ". . . our decision should be based on the Fourteenth Amendment, thereby putting an end to all obstructionist strategies and allowing every person . . . to patronize all places of public accommodation without discrimination whether he travels interstate or intrastate. . . ." In addition, it was pointed out that the 13th Amendment was to be regarded as "additional authority" for the legislation. Civil rights legislation dealing with individual discrimination had come full circle.

But Congress also considered this a "moral problem" as well. In a concurring opinion Justice Goldberg pointed out that the purpose of the act was to solve the problem, "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues."

Roe v. Wade: A Case Study in Individual Freedoms

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INTRODUCTION

During this lesson students will participate in a simulation that involves a case study of Roe v. Wade. Through the simulation students will determine the issue, develop arguments for both sides, present the arguments, vote on the issue, examine the Supreme Court's decision and its impact. Students will develop an understanding of the judicial process and the implications of the establishment of precedents. The student will develop a variety of thinking skills by choosing the most appropriate response from among several options, by assembling information needed in a topic area, by comparing advantages and disadvantages of alternative approaches, by determining what additional information may be required to reach a decision, and by judging the most effective response and being able to justify it. Various ethical and legal considerations concerning the abortion issue will be examined.

AUDIENCE

Juniors and seniors in government or law classes.

TIME TO COMPLETE

One to two class periods.

GOAL

As a result of this lesson, students will:

- develop an understanding of the process for decision-making through analysis of a contemporary issue.

MATERIALS

Value statements and case study of Roe v. Wade.

PROCEDURES

1. Because of the controversial nature of this case, prepare students in advance by getting them to think about the nature of controversy and the role it plays in a democratic system of government. Be sure they understand that controversy has a legitimate role in our process of governance and that the only way to examine the issue is through reasoned discussion.
2. Read the facts in the case Roe v. Wade and determine the issues, the individuals involved, and the response to the issues by each individual.
3. Divide the class into four groups and distribute the role play situations.
4. Choose a spokesperson in each group and have the student prepare arguments for each player.
5. Present arguments, allow for questions, vote on the issue.
6. Debrief the lesson with the following questions:

   What factors help determine how the courts might rule? Is a system fair that allows nine people to determine such controversial subjects? Are there other ways to decide an issue? Might they or might they not be better?
7. Share the decision in the case for comparison.

EVALUATION

Students should be evaluated on the preparation and coherence of their written arguments. Using other case studies such as Brown v. Board of Education or Terry v. Ohio, have students prepare their own written arguments for further evaluation.

TIPS FROM THE TEACHER

Lawyers are an excellent resource in helping students prepare their arguments. A written survey may be conducted at the beginning of the lesson to allow students to express their opinion on the abortion issue. Repeat this survey at the end of the lesson. The survey may be used as the focus of a discussion concerning the decision-making process.

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An excellent source of case studies with the issue and the decision.

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HANDOUT 1

PREGNANT WOMAN

You are a pregnant woman who wishes to obtain an abortion. You believe that the choice to have or not to have the child is a personal decision in which the government has no role. No one else is involved except yourself. Your future plans to get an education and become a productive, wage-earning citizen will be denied to you if you bear this child. The family pressure and psychological pain you and your family will experience is weighing on your decision. Your personal reputation and the social stigma of being an unmarried parent are of great concern to you.

At your age, statistics show that getting pregnant can be detrimental to your health and that of the child. You will be denied an important part of your youth by having a child at such a young age. You worry that your child might be another burden on the government.

Living in a country that was founded on individual liberty, you feel that the government's laws which keep you from making decisions about your own body violate your right to privacy.

YOU NEED TO PREPARE ARGUMENTS THAT SUPPORT YOUR POSITION AND BE PREPARED TO DISCUSS THEM.

DOCTOR

As the doctor who is being asked to perform the abortion, you feel that legalized abortion would solve many problems. You are worried about your patient's health. She is very young and statistics indicate that not only is the mother's mental and physical health at risk, but so is the baby's health. As a doctor you have sworn to the Hippocratic oath that states that you will treat patients to the best of your ability and judgment in the manner you consider to be most beneficial to the patient. In this case, you feel that an abortion is warranted.

On a personal note you realize that unless abortion is legalized your reputation, career, and professional standing will be ruined if you continue to perform abortions against the law. If it is not legalized you know that women will continue to get abortions from non-professionals who are more interested in the money than in the patient's health.

YOU NEED TO PREPARE ARGUMENTS THAT SUPPORT YOUR POSITION AND BE PREPARED TO DISCUSS THEM.

STATE LEGISLATOR

In Texas there are criminal abortion statutes which prohibit abortions except in cases where a mother's life is at risk. This law represents the opinion of many of the people of your state. You view it as your responsibility to defend this law. You believe the law was designed to protect the rights of the fetus. You believe that it is the right of the state to make laws that protect its people and laws which reflect the will of the people of your state.

You believe that allowing justices of the Supreme Court to rule against a law that represents the feeling of many of the people in your state is "un-American."

You believe that if abortions are legalized the expense of providing medical assistance to women desiring an abortion would place an undue burden on your state's budget.

Finally, you believe that laws are based on morality and that allowing abortion would be immoral. People should have the right to follow their own course of action as long as other people are not hurt.

YOU NEED TO PREPARE ARGUMENTS THAT SUPPORT YOUR POSITION AND BE PREPARED TO DISCUSS THEM.

ROE V. WADE
410 U.S. 113 (1973)

The Texas criminal abortion laws made it a crime to procure or attempt an abortion except on medical advice for the purpose of saving the mother's life. "Jane Roe," a pregnant single woman who wanted an abortion, challenged these laws as unconstitutional, and brought suit against Mr. Wade, the district attorney for Dallas County.

DECISION

Issue:
Does a pregnant woman have a constitutional right to choose to terminate her pregnancy?

Decision:
Yes, in certain cases. 1) Prior to the end of the first trimester, the abortion must be left up to the woman and her physician; 2) After the first trimester, the state may regulate abortion procedure so as to protect the mother's health (i.e., require abortions to be performed in a hospital); 3) After viability (when the fetus has the capability of meaningful life outside the mother's womb), the state may regulate and even proscribe abortion, except where necessary to preserve the life of the mother.

Drug Testing: Is It Constitutional? A Fourth Amendment Search and Seizure Question

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INTRODUCTION

This lesson relates to the Fourth Amendment search and seizure issue. There is a lot of publicity in the news about drug testing and whether it is constitutional to test individuals. This lesson allows students to examine the drug testing issue and to make decisions about whether they feel it is constitutional. Students will role play situations where drug testing might be necessary. By doing these role plays, students will become familiar with situations where drug testing might protect other people's safety. The drug testing of air traffic controllers is an example. Should air traffic controllers be tested? Is it constitutional to test them for the safety of the passengers? Students are put in these situations to develop their own opinions. It is important for students to develop views on these issues. Because of the widespread use of drugs and drug testing, students might face one of these situations in the future.

AUDIENCE

Grades nine through twelve; law education or government classes.

Can be used in grades six through eight Civics-legal class by leaving out Schmerber case or using case summary (provided).

TIME TO COMPLETE

Six or seven class periods. (50 to 60 mins.)

Lesson can easily be broken into two separate lessons. The teacher can simply use the search and seizure material as an entire lesson (using handouts 1 and 2) or the teacher can give out the handout on search and seizure as an introduction to the activity on drug testing. Either of these lessons can be adapted to be used in two or three class sessions.

GOALS

As a result of this lesson, students will:

- explain the rationale behind the Fourth Amendment
- list common situations in which a search warrant is not required
- analyze factual situations in order to determine whether a search is lawful
- analyze situations in which drug testing might be appropriate

MATERIALS

- Pre-test/Post-test (Handout 1)
- Search and Seizure: The Fourth Amendment (Handout 2)
- Questionnaire: Drug Testing (Handout 3)
- Scenarios (Handout 4)
- Access to *Schmerber v. California* (Handout 5)

PROCEDURES

1. *Day One:* Introduce the Fourth Amendment by reading it to the class. Then give students a pretest (Handout 1) of what situations they feel are covered by the amendment. Allow five to ten minutes to complete the handout. Then collect the handout and tally the student's responses
2. Give each student a copy of Handout 2. Students should read this out loud in class and discuss it. The teacher may conclude the lesson at this point by having students answer the following questions: What are the exceptions to the search warrant/probable cause clause? What are the requirements for a search warrant? What is the meaning of probable cause?
3. *Day 2:* Begin class by reviewing the activities of the previous day. The teacher can ask similar questions to the ones asked yesterday. Then give the students the same test as a post-test (Handout 1). Allow the same five or ten minutes to take the test. This time, however, students should be able to tell you why they believe the search is or is not reasonable using the last question as a lead-in. Students should each be given a copy of the Schmerber case (Handout 5). Teachers can use other Fourth Amendment cases if desired. There should be enough time left in the class period for the teacher to note the key points in the case.

Students can then finish reading the case for homework.

4. *Day Three:* Students can begin by answering the following questions about the Schmerber case: In what court does the trial take place? What was Schmerber charged with? Was he convicted? Do you think this was a fair search and seizure? After discussing the case for three-fourths of the class period, hand out the questionnaire (Handout 3) and have students complete it.
5. *Day Four and Five:* Divide the class into three groups. Each group will be given one scenario. (Handout 4) Allow students five to ten minutes to read and discuss the scenario. Then allow group members to decide what roles they will assume. Suggested roles are given below; the teacher can add more if needed. It is important to make sure that each student is given a part in the role play. Allow one or two class periods for students to plan their role plays. Each group should be encouraged to be creative. If possible, the teacher could call in a resource person familiar with drug testing to watch role plays and react to them.

   Suggested roles for Scenario I: (See Handout 4) 1) pilot, 2) passenger, 3) union representative, 4) single passenger, 5) air traffic controller, 6) television reporter. *Scenario II*: 1) power plant coordinator, 2) construction worker, 3) personnel director, 4) local homeowner, 5) local business man, 6) newspaper reporter. *Scenario III:* 1) principal, 2) newspaper reporter, 3) teacher, 4) parent, 5) student, 6) school board member.
6. *Day Six:* Students act out their scenarios. Each role play should take between ten and fifteen minutes. After completing all three, the teacher (and resource person, if applicable) can debrief the class. Students should be able to see how others could feel about drug testing and be able to come to a decision about each case as to whether they would or would not allow drug testing.
7. *Day Seven:* Begin the day by administering the questionnaire (handout 3). Then compare the first results to the second results. Finally, have students write about why their views did or did not change. This should serve as a summative evaluation.

EVALUATION

The informal evaluation is ongoing. The teacher must make sure the students understand by asking questions throughout the lesson to check comprehension. The final evaluation is a summation of what they learned in the lesson. The teacher may also add an objective test based on the search and seizure guidelines.

TIPS FROM THE TEACHER

This activity could be used with grades six through eight by taking out the case study. All other material can be understood by the younger student. The teacher might have to change the time frame to suit the class needs. Also, if the teacher wants to spend more time on this activity, there are a variety of other cases dealing with search and seizure available. Some are listed below.

Ask a local lawyer or judge who is familiar with the issue to observe role plays and help with the debriefing. Some suggested cases on search and seizure include: *U.S. v. Choate, U.S. v. Knotts, Smith v. Maryland, Katz v. U.S., U.S. v. Karo, Illinois v. Gates, U.S. v. Watson, Chimel v. California, Coolidge v. New Hampshire,* and *California v. Carney.*

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HANDOUT 1

PRE-TEST/POST-TEST

For each of the following situations indicate whether, in your opinion, the police officer conducted a reasonable search and seizure. Explain why or why not.

1. Jim Smith was home one evening when two police officers knocked on the door. When Mr. Smith answered the door, they identified themselves and asked if they could speak to him. Smith let the officers in and asked what they wanted. They said that they had received information that stolen jewelry and furs were hidden in the apartment. They asked Smith for permission to search the apartment and he gave them permission. They conducted a search and found some furs and jewelry. Smith said they belonged to his wife. The police arrested Smith.
2. Burt Johnson was stopped for having a broken tail light and arrested for driving after his license had been revoked. Before taking Johnson to the station, the police searched him and found a package containing cocaine inside the pocket of his jacket. Johnson was also charged with possession of drugs.
3. Jessica Falcon was returning to this country after spending two weeks in Europe on a skiing trip. Her luggage was searched by customs officials upon arrival and nothing was found. The customs official also examined her ski poles. They came apart and packages of heroin were found inside. She was arrested for possession of drugs.
4. The police were chasing a man who had just robbed a bank. The man had a gun. He ran into a building. The police chased the man to the third floor where they saw him enter an apartment and close the door. The police forced their way into the apartment and arrested him. Then they searched the chair he had been hiding behind and found a gun, which they seized.
5. While on patrol, a police officer passed a parked car. The officer looked into the car through the closed window and saw a shotgun on the back seat. The owner of the car returned and was asked if he had a license for the gun. When he said he did not he was arrested.
6. Armando Schmerber was at the hospital being treated for injuries that had occurred as a result of an automobile accident. Schmerber was the driver. Police directed a physician to withdraw a blood sample from Schmerber against his wishes. As a result of the blood test, Schmerber was arrested for driving under the influence of an intoxicating liquor.

HANDOUT 2

SEARCH AND SEIZURE

THE FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, (1) and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (2).

1. First, you must determine if the government activity is a search.
   a. if yes, see #2 (below)
   b. if no, the amendment does not apply
2. If the activity is a search, you must then determine if the government activity is reasonable.
3. What is a reasonable search?
   a. To be a "reasonable" search it must be based on a *search warrant* issued when there is *probable cause.*
   b. Requirements for a search warrant:
      - Each search warrant can allow the search of only one person, place, or vehicle.
      - The warrant must identify the exact area to be searched.
      - The warrant must state what type of property is being searched for.
      - The police officer must swear under oath that the information he is giving is true.
      - The warrant must be issued by a neutral and properly authorized judge.
      - The person who issues the warrant must believe there is probable cause.
   c. Probable cause requirements:
      - Probable cause to search—evidence that leads a reasonable person to believe that if he looks in a specific place he would find specific criminal goods.
      - Probable cause to arrest—evidence that leads a reasonable person to believe that a crime has been committed and the person to be arrested is the one who committed the crime.
4. Exceptions to the search warrant and/or probable cause requirements:
   a. *Search incident to a lawful arrest*—The police can search a person and his immediately surrounding area for hidden weapons or evidence that could be destroyed (you do not need probable cause).
   b. Items discovered in *plain view*—can be seized by an officer from a place where the officer has a right to be.
   c. *Automobile search*—is reasonable if the police officer has probable cause to believe there is contraband in the automobile.
   d. *Stop and frisk*—the police officer must reasonably think a person is behaving suspiciously and may be armed.
   e. *Voluntary consent*—if a person agrees, the police can conduct a search without a search warrant or probable cause.
   f. *Hot pursuit*—if police are in hot pursuit of a suspect they do not have to get a search warrant to enter a building they have seen the suspect enter. They can also seize evidence they find while in hot pursuit of a felon.
   g. *Emergency situations*—sometimes police do not have time to get a warrant because of some emergency situation like a bomb scare, a person's life in danger, or some other urgent situation.
   h. *Border and airport searches*—custom agents may search without probable cause or a warrant. Also, a metal detector search is legal in an airport.

HANDOUT 3

QUESTIONNAIRE—DRUG TESTING

1. Do you think there are jobs in government that should require drug testing? yes ___ no ___
2. Would you consent to a drug test in order to keep your job? yes ___ no ___
3. Do you think employers could or should ever require drug testing as a condition of employment? yes ___ no ___
4. Do you care if your teachers use drugs? yes ___ no ___
5. Do you care if your teachers use drugs while on the job? yes ___ no ___
6. Would it bother you if one of your lawmakers used drugs daily? yes ___ no ___
7. Do you think a person could or should be fired because he refused to take a drug test? yes ___ no ___
8. Do you think drug testing is fair? yes ___ no ___
9. If you were a manager, would there ever be a time when you would want to drug test your employees? yes ___ no ___
10. Do you think police officers should be tested for drug use? yes ___ no ___
11. Do you think people should be allowed to use drugs whenever or wherever they choose? yes ___ no ___

HANDOUT 4

SCENARIO I

You are a passenger in an airplane that is flying into a large, international airport. You have heard rumors that this airport has a problem with drug use amongst the air traffic controllers. You understand that this is a highly stressful job but you are concerned about your safety at this moment. You have been reading in the newspapers about the constitutionality of drug testing of individuals by their employers. Until now you have not paid much attention to this problem, but now seems like an appropriate time to make a decision concerning the constitutionality of this right. Do you allow the airlines to drug test these controllers in order to insure the safety of the many people who are flying on this airline?

SCENARIO II

You live in a city that is constructing a nuclear power plant. This type of a plant could prove to be extremely dangerous if precautions are not taken. You want the builders to be very careful with the selection of the people who will be involved with the construction of the power plant. Several times in the past, hazardous situations have developed because of poor work done by the construction company. After checking into the causes of these situations, it was determined that many of them were caused by workers who were using drugs. You have heard about drug testing but are not sure if it is constitutional. Do you allow the government to drug test the construction workers to insure the safety of the community?

SCENARIO III

You are a teacher at a school that has been dealing with increased use of drugs and alcohol among the students and the faculty. The local newspaper has blown the situation out of proportion. Parents are calling the school and the school board demanding immediate action be taken to find out which of the faculty members are involved in the use of illegal drugs. Parents are requesting that a mandatory drug test be given to all faculty members, including the principal. You are not sure that the test is constitutional and do not want to be subjected to the test just to hush the parents. You are wondering if the school can dismiss a teacher who refuses to take the test.

HANDOUT 5

ARMANDO SCHMERBER, PETITIONER
V.
STATE OF CALIFORNIA
(summary)

In 1966, a young man named Armando Schmerber was arrested while at the hospital being treated for injuries he sustained in an accident while driving his car. He was convicted in a Los Angeles Municipal Court, California, of driving an automobile while under the influence of intoxicating liquor. Despite Schmerber's protests, a police officer ordered a blood sample be taken from Schmerber by a doctor. The report of the chemical analysis of the test, indicating intoxication, was admitted into evidence at the trial. Schmerber argued that the state violated his right to due process of law under the Fourteenth Amendment, and his privilege against self-incrimination under the Fifth Amendment, and his right against unreasonable searches and seizures under the Fourth Amendment. Schmerber took his case to the Appellate Court, but the Appellate Department of the California Superior Court affirmed the conviction. The Supreme Court also affirmed the conviction and held that according to the facts, Schmerber's constitutional rights had not been violated by the compulsory blood test and the admission of the evidence at the trial.

"So Arduous a Duty"— Judicial Decision-Making and the Will of the People

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INTRODUCTION

This lesson will help students understand that our constitutional system originates from the "consent of the governed" and that it relies on anti-majoritarian provisions like judicial review, the Bill of Rights and other Amendments to protect the minority from what Alexander Hamilton called majority oppression. This lesson introduces students to the First Amendment. It explains the concepts of checks and balances and of judicial review. It gives students insight into how a government can be responsive to the will of the people while also being restrained from abridging the rights of political minorities.

AUDIENCE

Grades seven and eight

TIME TO COMPLETE

Two to three class sessions

GOALS

As a result of this lesson, students will:

- understand why our system rests on majority rule
- understand why and how our constitutional system moderates and checks majority rule
- develop critical thinking
- deepen their understanding of the fundamental principles underlying our constitutional system
- analyze a First Amendment issue and make a reasoned decision

MATERIALS

Chalk and chalkboard, overhead projector, checks and balances transparency, scripts for dramatic reading

PROCEDURES

1. Before starting this lesson announce to students that they will be taking a test on the Constitution three days hence. They should study the First Amendment and have written definitions for the following words: petitioner, truce, injunction, nominal, regimentation, deviate, permissive, disputatious, anti-Semite. (Other readings might be cited for students to review for the test.)
2. One day before the lesson take aside four student "plants." Explain that their role will be to object to the decision when a majority of their classmates vote to postpone a test.
3. On the day of the lesson announce that a test has been planned but that there is a possibility of doing something else instead. The teacher might say: "Mr. Lutz asked me after school yesterday if I wanted to bring my classes to compete against his classes in a Constitution Bowl. I know you have planned on taking a test today, but I thought this competition would be a good review and fun also. We have these doughnuts (chocolate and vanilla covered—in view) that we are giving to the winning team. Now we can go ahead with the test as we planned or we can compete and have a shot at the doughnuts. How many would not mind postponing the test?"
4. While the teacher is counting hands, one of the plants speaks up. The student might say: "I don't think it's fair to vote. Of course, everyone is going to vote to try to win doughnuts. I studied for this test. I think we should take it now when we're ready." (This student should have a well-integrated personality.)
5. At this point contemplate momentarily and then say, "Maybe Kristin is right. Perhaps we should decide this differently. Let's try this: I'll pick five students who will listen to Kristin and

a couple of others who want to speak. We will let these five decide. Kristin, is that okay with you?" (Three of the five students chosen are plants; two are strongly in favor of postponing the test.)

6. The Committee of Five listens to arguments from Kristin and two others in class who want to postpone the test. Then they go outside to vote and return with a 3-2 majority decision to take the test. As the turmoil swells the teacher passes out the following test questions: Did you want to have the test today? Approximately how many students voted to postpone the test? How many voted to take the test? How many on the Committee of Five voted to take the test? Did they represent the opinion of the majority? Do you think the way this decision was made was fair? Why? Why not?
7. After students have answered the questions, lead a discussion using the test questions as a springboard. Issues and concepts that should be raised are: majority rule, democratic decision-making, autocratic decision-making, "We the people," "consent of the governed."
8. Before the students leave for the day the teacher gives each one a doughnut, explains why the student plants acted as they did, and assigns the following reading and questions for homework:

Tinker v. Des Moines

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers. It prayed for an injunction restraining the school officials and the members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. (From Justice Fortas' opinion in *Tinker v. Des Moines*)

Questions for *Tinker v. Des Moines* case discussion

Who made the decision that wearing black armbands would result in suspension?

Why did the students wear black armbands to school?

Were students who wore the armbands aware of the regulation?

What questions would you like to ask Christopher Eckhardt, John Tinker, Mary Beth Tinker, the principals and school board?

Do you agree with the decision of the school board and principal? Why? Why not?

9. The next day discussion centers on homework questions and student responses. As the discussion unfolds students should understand that:

- An elected school board supported the decision to discipline the students;
- A majority of students obeyed the regulation. Only five of 18,000 students in Des Moines schools wore black armbands;
- There was no violence, nor were there threats of violence on school property when the students wore the armbands.

10. Before the discussion ends the teacher might say: "A lot of you were upset yesterday when we didn't abide by majority rule. Why? Now if the Des Moines schools go by majority rule, where does that leave the Tinker children? Do you think it is fair for them to be punished for expressing their opinions silently and passively? What recourse do they have when they are prevented from expressing their opinions?" (Either students or teacher will bring up First Amendment.)

    At this point the teacher displays a checks and balances transparency and underscores the contribution of judicial review in safeguarding the minority "against the effects of occasional ill humors in the society."

11. Dramatic Reading With Audience Response. Three students representing Abe Fortas (majority opinion in Tinker case), Hugo Black (dissenting opinion), and a school official put together a short show, pitting Justice Black and the school official against Justice Fortas. (See Handout 1).

EVALUATION

- The teacher will evaluate students' responses on two sets of written questions.
- The teacher will observe the students' participation in class discussions and their questions during the dramatic reading.
- The teacher will have students write an expository paragraph explaining why they believe the Tinkers should or should not be disciplined.

TIPS FROM THE TEACHER

Before students leave following the first day of the lesson, make sure they know that student plants were acting on direction from you. If teachers want to extend the free speech and expression aspect of this lesson and explore constitutional limitations on student expression, see *Bethel School District No. 403 v. Fraser.* Before the dramatic reading the teacher needs to work with student presenters so that they will be prepared to project their roles, answer questions, and defend their positions. In extending the questioning after the dramatic reading, it is helpful for students in the audience to have a copy of the script.

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HANDOUT 1

DRAMATIC READING

Abe Fortas. This case does not concern aggressive, disruptive action or even group demonstrations.

School official. Schools are no place for demonstrations. If students don't like the way our elected officials are handling things, it should be handled with the ballot box and not in the halls of our public schools.

Abe Fortas. The wearing of armbands was entirely separated from actually or potentially disruptive behavior.

School official. A former student of our high school was killed in Vietnam. Some of his friends are still in school and if any kind of demonstration existed, it might evolve into something which would be difficult to control.

Abe Fortas. In wearing the armbands, the students were quiet and passive. They were not disruptive and did not impinge upon the rights of others.

Hugo Black. Students cannot concentrate on assigned classwork when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and dead being their friends and neighbors.

Abe Fortas. There is no evidence . . . of petitioners' interference . . . with the schools' work or of collision with the rights of other students.

Hugo Black. Armbands caused comments, warnings by other students. A teacher of math had his lesson period practically wrecked chiefly by disputes with Mary Beth Tinker, who wore her armband for her demonstration.

Question period. Students in audience have 5 minutes to ask players questions.

Abe Fortas. First Amendment rights are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech at the schoolhouse gate.

Hugo Black. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases.

The truth is that a teacher [or student] no more carries into a school with him a complete right to freedom of speech than an anti-Catholic or anti-Semite carries with him complete freedom of speech into a Catholic church or Jewish synagogue.

Questions.

Abe Fortas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues," [rather] than through any kind of authoritative selection.

Hugo Black. Taxpayers send children to school on the premise that at their age they need to learn, not teach.

Abe Fortas. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

Hugo Black. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth. School discipline is an important and integral part of training our children to be good citizens—to be better citizens.

Questions.

A Criminal Justice Creative Writing Assignment

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INTRODUCTION

The Constitution provides the right of a jury trial to those accused of crimes. The Constitutional process also accords protection to the defendant if he/she is found guilty. Sentencing is seldom arbitrary, but tries to provide punishment that will not only meet the nature of the offense, but also fits the person being sentenced. This lesson introduces one of the functions of the probation department, which is to give guidance to the judge in sentencing a defendant. The design of this lesson is a writing exercise that will familiarize the students with the numerous factors taken into consideration prior to the judge delivering the sentence. This lesson should give students an insight into the sentencing process as well as increase their writing and analytical skills.

AUDIENCE

Grades eleven and twelve

TIME TO COMPLETE

Three class periods

GOALS

As a result of this lesson, students will:

- write a pre-sentence report which contains a description of the offense and the circumstances surrounding it
- recommend a sentence to the judge for the defendant in question

MATERIALS

Each student will receive each of the following:

1. Handout 1: The Guide for Pre-sentence Investigation Report
2. Handout 2: The "State v. Harria" Fact Sheet
3. Handout 3: Pre-sentence Report Fact Sheet
4. Handout 4: Risk Factor Table

PROCEDURES

1. Review with the students all of the materials included in the lesson. Tell the students that Samuel Harria has been arrested, tried, and convicted of felony. The constitutional process has been followed this far and the next step in the criminal justice system is what they will be studying. Tell students they will be assuming the role of an official within the state probation department. They are to write a report recommending a sentence to a judge. At this time it would be wise to review with the students the options available to them in the sentencing process. Jail, probation, a suspended sentence, fine, restitution, and work release are choices available to a judge.
2. Distribute Handout 1. Have the students study the guide for and review all ten criteria they are to consider and include in their report. Be sure the students understand that each of these must be considered and included in their report to the court.
3. Then Distribute Handout 2. Explain to the students that the fact sheet states the most basic information about the defendant.
4. Distribute Handout 3. Tell the students that probation officials use this during interviews with the defendant for a quick summary of pertinent information. The class should use the fact sheet just as a probation official would and then use that information in their report.
5. At this point students should be told that because the defendant is not going to be interviewed, they will have to create information about him that is not given in the lesson. Explain to them that they have to be creative in "filling in the gaps" of missing information. This can best be explained as the creative part of their writing exercise.
6. Distribute Handout 4. This can be completed from the information provided in the previously discussed fact sheet. Students should know that it is a numerical gauge used by probation officials to help in determining the sentence to be recommended. A high score is a favorable rating; thus, a less severe sentence might be recommended. A low score seemingly implies that the convicted defendant should be receiving a more severe sentence. This is just a handy guide for students to use in accessing what they think the sentence should be.
7. Remind students that a formal report

143

7. Remind students that a formal report should be written with a formal recommendation to the court. At least two pages would be the minimum length of the report.
8. After the reports have been written and each student has recommended a sentence to the court, a debriefing in class can take place. Selected students can read their reports and justify their sentence recommendation. The instructor might ask the class why different sentences were suggested by the students. Which decision was most just? Which decision was most unjust? Ask the students how they would compare and contrast the decisions made by other students acting as officials of the probation department.
9. Have class break into groups of two students each. One of the students will play the role of a probation department official and the other will be the defendant. Explain to the students that they will recreate an interview by a probation department official of the defendant Samuel Harria. The defendant will have to give creative answers to some of the questions being asked, as they have only limited information him. Students are to be reminded that they are to recommend a sentence to the court based upon the information they already have and what they will elicit from the defendant. After the interview has taken place, one class period, a report should be written.
10. After reports have been written, selected students should relate to the class what they recommended. If possible, try to bring to the class a lawyer or a local judge to hear the actual reports and allow them to sentence the defendant.
11. Explore with the students the protections guaranteed to citizens in the Constitution concerning the accused and trials. Specifically, Amendments 5, 6, 7, and 8 concern the accused and his/her rights. Question the class about why there is a presentence report filed before a judge imposes a sentence. Is there a constitutional right to this report? Question the class about rights we have that are based upon constitutional protections even though they might not be specifically mentioned. Ask students how they felt about the role they played. Did those who played probation officials feel a unique sense of responsibility? How did those who played the defendant feel? What was the interaction like between the two individuals as the interview took place?

EVALUATION

Students should be given a written examination. Each student is to work individually on his/her exam. The following questions can be the basis of the test:

1. What is the purpose of the pre-sentence investigation report?
2. What role do most state probation departments play in the pre-sentence investigation reports? Why do you think they play this role?
3. Why do judges feel it necessary to have input from probation departments through pre-sentence reports?
4. Should the victim of a crime have input into the pre-sentence report? Explain your answer.
5. Should defendants convicted of the same crime receive the same sentence, or should each person be judged individually? Explain your answer.

TIPS FROM THE TEACHER

I have found material produced by the American Bar Association very helpful. Many law-related educational materials may be purchased by writing to the ABA Special Committee on Youth Education For Citizenship, 750 North Lake Shore Drive, Chicago, Illinois 60611.

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HANDOUT 1
GUIDE FOR PRE-SENTENCE INVESTIGATION REPORT

1. CURRENT OFFENSE
    - A. Official Version of What Actually Occurred
    - B. Defendant's Version of What Occurred
2. PREVIOUS ARREST RECORD

    From your official record of the defendant and from your interview summarize prior arrests and dispositions. Remember that sometimes all the information might not be included on that official record. Be sure to ask the defendant if any pertinent information has been left out.
3. FAMILY HISTORY

    Learn as much as you can about the defendant's early years. You will want to know whether he/she came from a divorced home, the attitude he/she has toward his family, how many brothers and sisters, and the major influence on his/her life. Try to learn about any early incidence of misbehavior.
4. MARITAL HISTORY

    Is the defendant married? If so, determine the current state of that marriage. Are there children from the marriage? Is child support being paid? What is the attitude of the defendant toward family responsibilities?
5. EDUCATION

    What was the highest grade completed in school? Ask about social behavior as a student. Try to get achievement test results. Ask defendant if he/she remembers how well he tested if you cannot secure test results.
6. EMPLOYMENT

    Determine defendant's history of employment from present to first job. Determine the reason(s) for leaving employment. Are there patterns and trends to the work experience? What can you determine about the work skills, training, and attitude of the defendant?
7. MILITARY SERVICE

    List the dates of military service along with the branch of service. If less than honorably discharged, ask the reasons for dismissal. Ask if veterans' benefits are being received and what physical disabilities there might be.
8. PHYSICAL HEALTH

    Ask defendant about early childhood diseases, disabilities, or injuries. Be sure to inquire about any physical abnormalities the defendant might have. You must remember that the sentence received by the defendant could be influenced by health considerations. Evidence of drug abuse or alcohol abuse should be noted.
9. EVALUATION

    You must summarize the most significant factors from your investigation. Any positive elements should be noted at this time. You should include in your report any factors you feel contributed to the criminal behavior.
10. RECOMMENDATION

    After reviewing all you have done determine what type of sentence would be appropriate. If probation is your recommendation, be aware that supervision will be required. Supervision could include work, third party release, job training, education, or other options. If you feel jail is necessary, make a notation of special needs and problems of the defendant that should be considered.

HANDOUT 2
STATE V. HARRIA

DEFENDANT: Harria, Samuel

ADDRESS: 4715 Euclid Street

PERSONAL INFORMATION:

AGE: 27

SEX: Male

RACE: White

MARITAL STATUS: Divorced

DEPENDENTS: 2 Children

EDUCATION: High School Graduate

OCCUPATION: Truck Driver

EMPLOYER: Morris Trucking

SALARY: $900.00 Monthly

PRIOR RECORD: Age 15, Burglary, 3 years' state industrial school. Age 19, Grand Theft (auto), 8 months' county jail. Age 21, Forgery (checks), dismissed. Age 24, Robbery, 3 years' state penitentiary.

POLICE REPORT: On information from an informant Harria was arrested by two detectives at the Mayfield Bowling Alley. Force was needed to subdue the defendant as he was unwilling to be handcuffed. After reading him his rights the officers took him to his residence. In his home the following items were found: three televisions, one compact disc stereo, and one handgun. The above items have been positively identified as goods from three separate reports of breaking and entering.

BAIL: Defendant could not make the $20,000 bail and awaited trial in the county jail.

CHARGES: Burglary, Theft, Receiving Stolen Property, Possession of a Dangerous Weapon, Disorderly Conduct

HANDOUT 3

PRE-SENTENCING REPORT FACT SHEET

Name ______________________________

Address ______________________________

Age ______________________________

Place of Birth ______________________________

Education ______________________________

Marital Status ______________________________

Dependents ______________________________

Place of Employment ______________________________

Offense(s) ______________________________

Penalty Plea ______________________________

Custody Status ______________________________

Current Charges Pending ______________________________

Disposition ______________________________

HANDOUT 4
RISK FACTOR TABLE

Low,	Moderate,	High,	Very High
10-8	7-6	5-4	3-0

Offender's Name

1. No prior conviction 2 points
   One prior conviction 1 point
   Two or more convictions 0 points
2. No prior incarcerations 2 points
   One prior incarceration 1 point
   Two or more prior incarcerations 0 points
3. Age at first commitment 18 or over 1 point, otherwise 0 points
4. Offense did not involve personal injury 1 point, otherwise 0 points
5. Offense did not involve use of weapon 1 point, otherwise 0 points
6. Verified employment or full time school 1 point, otherwise 0 points
7. Offender not previously convicted of same offense 1 point, otherwise 0 points
8. Never had probation or parole revoked or been jailed for new offense while on probation or parole 1 point, otherwise 0 points

Total Points
Risk Factor Rating

Search and Seizure and the Exclusionary Rule

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John Sullivan

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INTRODUCTION

The theme of this lesson, search and seizure and the exclusionary rule, has always piqued student interest. How many classes, in courses relating to constitutional law, start with questions beginning with "what if . . ."? The following activity is designed to appeal to that inherent interest and to help students develop higher-order thinking skills.

AUDIENCE

Grades ten through twelve

TIME TO COMPLETE

This unit plan took 15 class periods, but the individual lessons can be integrated into daily instructional plans.

GOALS

As a result of this lesson, students will:

- apply inquiry and problem-solving/decision-making skills to other areas of constitutional study such as the sixth, seventh, and eighth amendments
- gain substantive knowledge of rights and privileges in the area of search and seizure
- engage in interactive learning by means of the lecture/discussion method

MATERIALS

Case, *Maryland v. Garrison*, 107 S.Ct. 1013, (1987) (Handout 1)

Fourth Amendment, Exclusionary Rule: *Mapp through Garrison* (Handout 2)

Analytical Model for Search and Seizure Problems (Handout 3)

Maryland v. Garrison, (Handout 4)

PROCEDURES

1. Distribute case, *Maryland v. Garrison*, 107 S.Ct. 1013, (1987),—or attached summary. Also, distribute Handout 3 [Analytical Model].
2. Define and delineate the student task. It is important to emphasize that the development of a well-reasoned argument based on inference, analogy, as well as facts of evidence is the desired outcome and not a right or wrong answer.
3. Assign students to Supreme Court groups and assign the task of formulating the "Court's Opinion" with a majority as well as a dissenting opinion.
4. Debriefing should include as much discussion of the process of decision-making as it does of the actual decision.
5. Distribute decision.

EVALUATION

As a result of repeated experiences with the inquiry method, teachers may observe an increased ability among students to apply and test theories and explanations to problems, and to discuss the strengths and weaknesses of various problem-solving strategies as they apply to a wide range of topic areas. Students should demonstrate a greater awareness of their own problem-solving strategies and a development of their metacognitive skills (i.e., planning, monitoring, evaluating).

TIPS FROM THE TEACHER

The teacher should model attitudes/dispositions which create a classroom environment that encourages risk-taking and a critical and a creative thinking "spirit."

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"The Exclusionary Rule," *American Bar Association Journal* (February, 1983).

HANDOUT 1

MARYLAND, Petitioner, v. Harold GARRISON,
107 S. Ct. 1013 (1987)

Defendant was convicted in the Circuit Court, Baltimore City, of possession with intent to distribute heroin, and he appealed. The Maryland Court of Special Appeals affirmed, and defendant petitioned for certiorari. The Maryland Court of Appeals reversed and remanded for a new trial. On certiorari to the Supreme Court . . .

Syllabus

Baltimore police officers obtained and executed a warrant to search the person of Lawrence McWebb and "the premises known as 2036 Park Avenue third floor apartment." When the police applied for the warrant and when they conducted the search pursuant to the warrant, they believed that there was only one apartment on the premises described in the warrant. In fact, the third floor was divided into two apartments, one occupied by McWebb and one by respondent.

Having conducted an investigation, including a verification of information obtained from a reliable informant, an exterior examination of the three-story building at 2036 Park Avenue, and an inquiry of the utility company, the officer who obtained the warrant concluded that there was only one apartment on the third floor and that it was occupied by McWebb. When six Baltimore police officers executed the warrant, they fortuitously encountered McWebb in front of the building and used his key to gain admittance to the first floor hallway and to the locked door at the top of the stairs to the third floor. As they entered the vestibule on the third floor, they encountered respondent, who was standing in the hallway area. The police could see into the interior of both McWebb's apartment to the left and respondent's to the right, for the doors to both were open. The police searched respondent's apartment in the belief that it was McWebb's apartment. Only after respondent's apartment had been entered and heroin, cash, and drug paraphernalia had been found did any of the officers realize that the third floor contained two apartments. As soon as they became aware of that fact, the search was discontinued. No further search of respondent's apartment was made. They discovered contraband and provided the basis for respondent's conviction for violating Maryland's Controlled Substances Act.

In granting certiorari, the case presents two separate constitutional issues, one concerning the validity of the warrant and the other concerning the reasonableness of the manner in which it was executed.

Task: Formulate an opinion in *Maryland v. Garrison.* Discuss the constitutional issues separately.

Issue 1. *Validity of Search Warrant*

Consider . . .

Article 26 of the Maryland Declaration of Rights

"That all warrants, without oath of affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or person in special, are illegal, and ought not be granted."

Warrant Clause of the Fourth Amendment

Categorically prohibits the issuance of any warrant except one "particularly describing the place to be searched and the person or things to be seized."

Steele v. U.S., 267 U.S. 498, (1925)

The particularity-of-description requirement is satisfied where "the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended."

Question: Does a factual mistake (there was only one apartment on the third floor of the building at 2036 Park Avenue) invalidate a warrant that undoubtedly would have been valid if it had reflected a completely accurate understanding of the building's floor plan?

Issue II. *Reasonableness of Manner in Which Warrant Was Executed*

Consider . . .

Brinegar v. U.S., 338 U.S. 160, (1949)

"Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability."

Silverman v. U.S., 365 U.S. 505, (1961)

"At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion."

Question: Did the execution of the warrant violate the respondent's constitutional right to be secure in his home?

HANDOUT 2

FOURTH AMENDMENT/EXCLUSIONARY RULE: Mapp through Garrison

Mapp v. Ohio, 367 U.S. 643, (1961):
Exclusionary Rule

By the Due Process Clause of the Fourteenth Amendment, all evidence obtained by searches and seizures in violation of the Constitution is inadmissable in a state court. The court thus overruled *Wolf v. Colorado*, 338 U.S. 25, (1949)

Aguilar v. Texas, 378 U.S. 108, (1964):
Use of Informers

Provided a two-part credibility test of hearsay evidence from an informant: 1. police must show why they believe informant ("veracity"), and the polist must state 2. the circumstances as to how the informant acquired personal knowledge of the crime.

Katz v. U.S. 389 U.S. 347, (1967):
Reasonable Expectation of Privacy

"Fourth Amendment protects people not places. . . . What he (an individual) seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

Terry v. Ohio, 392 U.S. 1, (1968):
Stop and Frisk

Police may stop and frisk a citizen and the activity will be reasonable under the Fourth Amendment where the police act on reasonable suspicion rather than probable cause (limited to "pat-down" for weapons).

Chimel v. Calif., 395 U.S. 752, (1969):
Scope of Search

An officer may conduct a warrantless search of arrestee's person and the area within his immediate control (area from within which he may get a weapon or destroy evidence).

Coolidge v. New Hampshire, 403 U.S. 443, (1971):
Plain View Doctrine

It is reasonable under the Fourth Amendment for the police to seize items of criminal goods inadvertently discovered in plain view when the police are where they have a right to be.

U.S. v. Robinson, 414 U.S. 218, (1973):
Search Incident to a Lawful Arrest

A full-blown search conducted, incident to a lawful arrest, is acceptable even when the officer has no reason to believe that the suspect is concealing a weapon or evidence.

Schneckloth v. Bustamonte, 412 U.S. 218, (1973):
Voluntary Consent

The government must show that consent to conduct a warrantless search was given voluntarily, and not the result of duress or coercion, express or implied. Voluntariness is based on the totality of circumstances.

U.S. v. Matlock, (1974):
Third Party Consent

Spouses and roommates are generally held to have the power to consent to the search of premises jointly possessed (shared space).

U.S. v. Watson, 423 U.S. 411, (1976):
Public Arrest Without Warrant

An arrest in a public place without a warrant is reasonable under the Fourth Amendment.

U.S. v. Ross, 456 U.S. 798, (1982):
Warrantless Searches of Automobiles

If probable cause exists to believe that an automobile contains criminal evidence, a warrantless search by the police is permissible, including a search of closed containers in the vehicle.

Illinois v. Gates, 462 U.S. 213 (1983):
Hearsay Information from Informant

The judge or magistrate may make a practical common sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband will be found in a particular place. [totality of circumstances]

U.S. v. Leon, 775 F.2d 302 (1984):
"Good Faith" Exception

If the police rely in good faith on a warrant, issued by a magistrate, they cannot be deterred by threat of suppression. The standard for good faith is entirely objective, "whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization."

Calif. v. Carney, 105 S. Ct. 2066, (1985):
Warrantless Search of Mobile Homes

A warrantless search of an automobile based on probable cause is reasonable under the Fourth Amendment. (inherent mobility/lesser expectation of privacy)

Maryland v. Garrison, 107 S.Ct. 1013, (1987):
Honest Mistakes

HANDOUT 3

ANALYTICAL MODEL FOR SEARCH AND SEIZURE PROBLEMS
THE FOURTH AMENDMENT

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED, [1] AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED [2].

BASIC MODEL

I. Is the government activity a "search"?
    A. If **NO** the amendment does not apply to limit government [evidence admitted].
    B. If **YES**, then was the government activity *reasonable* [see II below]?
    C. "Search" defined by *Katz*.

II. Assuming a "search" [I above], was the government activity *reasonable*?
    A. Reasonable searches based on warrant plus probable cause [evidence admitted].
    B. Reasonable searches based on an exception to warrant and/or probable cause requirement [evidence admitted.]
        1. Public arrest.
        2. Exigent circumstances.
        3. Incident to arrest.
        4. Auto search.
        5. Stop and Frisk.
        6. Plain view.
        7. Consent search.
    C. If government activity is a "search" but unreasonable, then evidence excluded.

© Professor Charles Rose
Wake Forest University School of Law
March 9, 1987

150

HANDOUT 4

Maryland v. Garrison, 107 S.Ct. 1013 (1987)

Decision: 6-3;
Justice John Paul Stevens for the majority.

(1) fact that search warrant was broader than appropriate because it was based on mistaken belief that there was only one apartment on third floor of building did not retroactively invalidate warrant, and (2) whether warrant was interpreted as authorizing search of entire third floor or only apartment of third party, search of defendant's apartment by mistake was valid because objective facts available to officers at the time suggested no distinction between third party's apartment and third-floor premises. Stevens said the "officers' conduct was consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment."

Justice Harry A. Blackmun, dissenting,
". . . officers' error . . . was not reasonable under the circumstances." The "words of the warrant were plain and distinctive," clearly saying that detectives were to search only Mr. Webb's apartment, not Garrison's.

Justice Blackmun, joined in dissent by Justices Brennan and Marshall, argued that the majority, by allowing "honest mistakes" to obviate Fourth Amendment problems, was ignoring the "special protection" that the high court has reserved for searches of homes.

In re Gault: An Introduction to the Juvenile Justice System Including Processes, Rights, and Limitations

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INTRODUCTION

In re Gault (1967) is an exciting case for students to use as an introduction to the modern juvenile justice system. Following discussion of this case, students will be able to identify rights accorded juveniles and rights accorded adults which are not extended to juveniles. This lesson will raise the level of awareness of secondary students concerning the justice system that is most relevant to their daily lives, i.e., the juvenile justice system.

AUDIENCE

Grades nine through twelve

TIME TO COMPLETE

Two to three class periods

GOALS

As a result of this lesson, students will:

- identify differences between the juvenile and adult justice systems;
- identify rights extended to and withheld from juveniles;
- recognize that the United States justice system is committed to the protection of due process rights for all age groups.

MATERIALS

- Handout 1—Background information on the In re Gault case.
- Handout 2—Supreme Court decision and rationale for In re Gault.
- Handout 3—Question Sheet 1
- Handout 4—Question Sheet 2

PROCEDURES

Have students read Handout 1. Then, split the class into groups of four or five and make each group responsible for answering the Questions from Question Sheet 1. After each group has completed this task, a whole class discussion comparing answers should be conducted.

After the part one discussion has been completed, have students read the Supreme Court's decision and rationale (Handout 2). Make each group responsible for answering the questions from Question Sheet 2. Conduct a whole class discussion to to help explain the court's reasoning and the effect its decision has had on the modern juvenile justice system.

EVALUATION

- Debrief students and evaluate their group work and discussion skill.
- Re-assign Questions to the whole class to be done individually after the initial presentation. This exercise can be used as a take-home test.

TIPS FROM THE TEACHER

1. A resource person (juvenile lawyer, juvenile judge, juvenile law expert) could help with other examples and explanatory information concerning each Question.
2. Use the lesson as an introduction to your local juvenile justice system—then continue with a more in-depth look at local juvenile law process.

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HANDOUT 1
In re Gault (1967)

On the evening of June 8, 1964, Mr. and Mrs. Gault of Maricopa County, Arizona, returned from work and couldn't find their son, Gerry. He wasn't at home where he was supposed to be. He wasn't at school. He wasn't with any of his friends. After a frantic search, they finally managed to locate their son at the Children's Detention Home. Gerry had been arrested that afternoon for allegedly making an obscene phone call to a neighbor.

The Gaults rushed to the home to collect their son, but he was not released. Instead, the family was told there'd be a hearing about Gerry's case the next day. On June 9, an Arizona probation officer filed a petition with the court which stated that Gerry was a delinquent minor, but which contained no details about his alleged crime. Gerry and his parents were not told he could consult an attorney or refuse to answer questions. The offended neighbor wasn't even present at the meeting. After it was over, Gerry was sent back to the Detention Home.

When Gerry was released a few days later, his mother received a notice from the probation officer announcing another hearing on June 15th. Again, no records were kept. Again, the neighbor was absent. When it was over, the juvenile court judge committed Gerald Gault as a juvenile delinquent to the Arizona State Industrial School "for the period of his minority." In other words, Gerry received a six-year sentence. The maximum adult punishment for his alleged crime was a $50.00 fine and two months in jail.

The Gaults immediately filed a petition of habeas corpus on Gerry's behalf, arguing that their son had been denied his rights under due process of law. The Arizona state courts, however, denied these claims. Because the adult and juvenile systems had different aims, explained the Arizona Supreme Court, they required different definitions of due process. If the state applied strict adult regulations to juvenile cases, it could not provide the individualized justice which was the heart of the juvenile system. Though Gerry's treatment was not in accordance with adult due process requirements, the boy had not been treated differently from other juveniles. Arizona agencies had acted in accordance with their normal procedures, and the decision to confine the boy was upheld. Unconvinced, the Gaults appealed to the U.S. Supreme Court.

HANDOUT 2
In re Gault (387 U.S. 1)
Decision of the U.S. Supreme Court

Prior to Gault, U.S. courts had upheld the idea that young people had a right "not to liberty, but to custody." In other words, a child's right to protection outweighed his or her right to independence. In the Gault decision, the Supreme Court stated that, on the contrary, just like adults, juveniles had a vested interest in not getting jailed. It made no difference whether the jail was a reform school, detention center, or prison. Any juvenile proceeding which could lead to confinement must follow minimum standards of fairness and due process.

Rationale of the Court

1. A defendant must be informed of the charges against him or her; notice of the charges is an essential element of a fair trial. Until he found himself in a hearing room, neither Gerry nor his parents knew why he'd been accused. The official petition, which the Gaults were not shown prior to the hearing, said only that Gerry was "in need of the protection of this Honorable Court." The Supreme Court was not satisfied with this general charge. Detained juveniles and their parents must be told specifically what conduct was under question and why a hearing was being held. More importantly, this information had to be provided well in advance of the hearing so the accused could prepare a response.
2. All young people subject to confinement had a right to the services and advice of an attorney and must be informed of their rights. The state must provide attorneys for those too poor to afford legal fees. In theory, the hearing and probation officers were supposed to be looking out for the young person's best interest, but since confinement was so much like punishment, the court decided that young people needed personal advocates. Attorneys would also help young people better understand what was happening to them in the juvenile justice process.
3. Officers must inform a young person of his or her right to remain silent before questioning. In addition, if a young person refuses to answer questions, that refusal cannot be used as an indication of guilt. Under oath during the habeas corpus proceedings, Gerry's hearing officer testified that during the June 9 and June 15 hearings, the boy had confessed to making the offensive phone call. Also under oath, Gerry's mother, who was present at both meetings, denied this claim. She asserted that her son only confessed to dialing the phone, but that another boy had done the talking. The Supreme Court announced that this conflicting testimony was irrelevant because neither Gerry nor his family had been informed of the boy's right to remain silent. Juveniles, too, were protected from self-incrimination by the Constitution.
4. Juveniles have the right to cross-examine their accusers. The neighbor who accused Gerry Gault never appeared at the hearings to explain why she blamed Gerry for the phone call. Confronting and questioning witnesses was an important part of determining the validity of evidence. If a witness's testimony was to be used in determining the facts of a case, that witness must appear in court.

Conclusion

Though it marked the first big step in asserting juveniles' rights, the Gault decision was also significant because of the rights it did not guarantee. The Court refused to apply its due process requirements to cases where the detained juvenile was released on probation, sent to a foster home, or in other ways released. Nor did it insist that juveniles receive all the constitutional protections available to adults.

The Court, for example, did not consider whether hearsay evidence was admissible in cases like Gerry's, where the juvenile was detained for a specific offense and the hearing officer had to determine whether or not the young person had actually committed that offense. It did not rule on cases where the juvenile was picked up on more general grounds, like being beyond parental control or keeping bad company. To decide whether such complaints were valid, a juvenile judge might have to rely on hearsay evidence, and Gault did not necessarily prohibit this practice. Gault also left questions about other constitutional issues, such as the exclusionary rule and rights to speedy, public, and jury trials, unanswered.

HANDOUT 3

Question Sheet 1

1. What do you think are the most important parts of due process of law that help a person get a fair hearing in court?
2. Why do you think these protections exist?
3. Do they sometimes make it harder to convict a criminal? Why or why not?
4. Do you think juveniles and adults should be treated alike in all cases where law is involved? What are advantages of having different treatment for juveniles as opposed to adults?
5. Why does the Constitution say there should be "due process of law," and why are the courts given the special responsibility of protecting it?
6. What is "due process of law"? What is fairness?
7. Do you think Gerald had a fair hearing or not? Why?
8. What similarities and differences do you find between the process Gerald experienced and that which an adult would experience?
9. What constitutional rights normally given to adults were violated? Where do unfair events happen to Gerald?
10. Why do you think juveniles have traditionally held fewer rights than adults?

HANDOUT 4

Question Sheet 2

1. Why did the Court find in favor of Gerald Gault? Frame your answer in Constitutional terms.
2. Does the privilege against self-incrimination apply only in criminal cases? Since a juvenile court proceeding is not criminal in nature, why should this privilege be available to juveniles?
3. What has been the effect of the Court's decision in the Gault case on the juvenile justice system?

The Legislative Process: Understanding the Issues

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INTRODUCTION

The purpose of this lesson is to encourage students to investigate and study the issues facing Congress or the state legislatures. This project involves the interview technique and is designed to stimulate interest in the legislative process because students become familiar with the issues that legislators face. Throughout a study of the United States Constitution or state constitutions, it is important to familiarize students with the major issues that face the Congress or the state legislatures. Teachers teach students about the concepts in the Constitution and teachers use court cases to illustrate these principles, but students learn best when they are given the opportunity to relate the concepts to the issues that face the nation and the state. Students need to explore these issues themselves and formulate their own opinions. Therefore, the author of this lesson proposes that students interview their parents or other adults on legislative issues recently considered, presently pending, or to be considered in the future.

AUDIENCE

High school state constitution, United States Constitution and government classes. This lesson can be adapted for elementary and middle school classes.

TIME TO COMPLETE

This lesson occupies mostly out of class time and, therefore, could last one to four weeks.

GOALS

As a result of this lesson, students will:

- demonstrate increased interest in constitutional and public issues
- demonstrate that there are many sides to an issue and, therefore, many different points of view
- develop analytical, critical thinking and communication skills,
- initiate a dialogue between students and their parents over legislative issues

MATERIALS

1. Opinion survey to use during the interview with parents of other adults (Handout 1)
2. Various legislative bills or explanations of those bills

PROCEDURES

1. Distribute copies of the state issues opinion survey to students one week before introducing the government unit. You may substitute any national issues survey. Give the students one week to complete the survey for homework. If you give the students the assignment before you begin the unit, students will have the background knowledge of the issues to apply to the concepts of the legislative procedures.
2. Invite speakers to visit classes to discuss specific issues or issues in general. Speakers could include local, state, or national political office holders, lobbyists, attorneys, or representatives of political action groups. Students should prepare some questions in advance. Speakers will provide additional information and background knowledge of issues.

EVALUATION

The major purpose of this assignment is to raise the students' interest level and increase their knowledge of the issue. One way to evaluate this is to conduct pre- and post- tests to measure the increase in level of awareness. The activity itself can be evaluated by giving points for comprehensiveness of the opinion survey and participation in discussion with the speakers.

TIPS FROM THE TEACHER

Stress to students that parents need to be instructed that they are not required to defend sides in the opinion survey, but rather they might take the alternative approach by simply discussing both sides of an issue. One method for extending this activity is to have students choose an issue pending before the state legislature or Congress for further investigation. Students can become "class experts" and present their information to the rest of the class. Students can work individually or in small groups. Students should first obtain a copy of the bill. They should research the bill and report on the pros and cons and status of the bill. A class visit to the state capital might be arranged when the legislative body is in session. Arrangements might also be made to have legislators, administrative assistants, or lobbyists visit the class to discuss the various viewpoints concerning a specific bill.

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3. *Tell It To Washington*. Washington: League of Women Voters of the United States, Publication No. 346, 1981.

HANDOUT 1

ISSUES IN THE LEGISLATURE:
AN OPINION SURVEY

The following issues come up from time to time in the Legislature. Take this assignment home and obtain and record the opinion of your parents and other adults to the following questions. *Be sure to give the reasons why your parents are for or against the issue. If the adults you interview do not wish to discuss some of the issues for personal reasons, the alternative is to simply discuss both sides of the issue instead; that way sides need not be taken.*

1. Do you feel that laws restricting *toxic waste disposal* are adequate in Missouri?
2. How do you now feel about *stores being open for business on Sundays*?
3. Should our state give *state aid to non-public school children* for books and bus transportation?
4. Do you favor more restrictions on the ownership of *hand guns*?
5. Do you approve of the *death penalty*?
6. How do you now feel about *lotteries* for raising money for the state?
7. Should we *build more state prisons* or should we parole convicts earlier?
8. How do you feel about the *mandatory seat belt law*?
9. Should our state *increase taxes*? Why? Why not?
10. Should our state provide low interest loans or other *aid to help farmers*?
11. Should laws be passed *prohibiting smoking* in public places like offices, stores, restaurants?
12. Should a moratorium on the construction of *nuclear plants* be imposed?
13. Are you in favor of a *right-to-work clause* which would allow non-union workers to work on jobs along with union workers?
14. How do you feel about a *year-round school*? How about an 8 A.M. to 5 P.M. schedule to reduce the need for day care services?
15. Should victims of *violent crimes be compensated* by the state?
16. Should the *sales tax on food and medicines be eliminated*, even though increasing sales taxes on other items or increasing income taxes may be necessary to make up for the loss in revenue?
17. Should *longer and heavier trucks* be allowed to travel the highways?
18. Do you feel that our *gasoline tax* for providing funds for highway and road maintenance and construction is adequate?
19. How do you feel about the state's *property assessment laws*?
20. Would you be in favor of *no-fault car insurance*?

Students' Constitutional Rights

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INTRODUCTION

The focus of this lesson is students' rights as related to the Bill of Rights. The lesson utilizes a role-play simulating the search of students suspected of possessing illegal drugs. Class discussion focuses on reactions to this enactment. Students then examine the situation from several points of view and analyze the implications based on the Constitution. To enhance critical thinking skills, students argue landmark cases involving students' rights. Since the 1960's the Supreme Court has applied constitutional rights to the public school setting more frequently. Interpretation of the protections in the Bill of Rights as related to schools remains an issue with many unanswered questions of interest to students. The right to privacy, to a free press, and to fair treatment at school become more pertinent when teachers involve students in the case study approach to landmark Supreme Court cases.

AUDIENCE

Advanced upper elementary and middle school students

TIME TO COMPLETE

Three 45-minute class periods

GOALS

As a result of this lesson, students will:

- discuss and analyze the First and Fourth Amendments as they relate to the rights of students
- develop understanding of the importance of the First and Fourth Amendments
- develop critical thinking skills

MATERIALS

Copies of the Bill of Rights and the attached Supreme Court cases addressing students' rights.

PROCEDURES

1. This lesson might be more effectively utilized after students have some familiarity with the Bill of Rights, specifically the provisions of the First and Fourth Amendments.
2. Preceding introduction of lesson, select a girl to be a "plant" to protest a simulated search of students in the classroom. A "plant" is a student with whom the teacher has prearranged to say or react in a certain manner, at the appropriate time in the lesson.
3. The principal, who has been briefed prior to the simulation, will enter the classroom and inform the teacher that certain of his/her students were reportedly seen in the restroom preceding the discovery of a plastic bag containing a white, powdery substance.
4. Inform the class that a search is necessary. Rationalize the search in terms of school policy and discipline. The "plant" should then protest the violation of students' rights citing the protection against searches and seizures in the Fourth Amendment.
5. Solicit other students' opinions concerning the search and encourage critical thinking by asking students to defend their position on the issue. (Follow-up questions attached.)
6. After a thorough discussion, reveal that the activity was a simulation and assure students that no one has actually been accused or set up.
7. Ask for feelings and reactions concerning the accusation, possible search, and confrontation with the teacher. (Possible questions attached.)
8. Utilizing the Fourth Amendment, discuss "reasonable cause" and "probable cause." Lead the students to understand that "probable cause" means that the circumstances leading to the search made it highly probable that the person being searched might have committed a crime. It does not require absolute certainty. However, when a search is conducted by a school official, all he/she needs is "reasonable cause," which is a less

stringent standard. A search at school may be conducted as a result of suspicion or rumor, a lesser degree of certainty than "probable cause." (A guest lawyer or law enforcement officer is strongly suggested to reinforce this concept and answer questions that will arise.)

9. After distributing copies of *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985), use the case study approach to reviewing and analyzing the case. In case studies, students are asked to deal with the facts and the issues in the case, to reach and support a decision and to weigh the consequences of that decision. Therefore, students will gain practice in all levels of thinking. First, ask students for an oral recitation of the facts in the case. Then ask students to identify issues or key questions that the facts raise about the amendments. Divide the class into two sides and allow both sides to argue their issues in front of the class. The "judge" (a student, or an adult) will render a decision based on the arguments presented. Finally, announce the actual decision. Use questions to guide the students to consider the implication of the court's decision.
10. Divide the class into groups of five. Each group will analyze a landmark case (attachment) pertaining to the rights of students. Case studies should include:

    Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

    Fairfax Co. School Board v. Gambino, 564 F.2d 157 (1977).

    Bethel School District No. 403 v. Fraser, 106 S. Ct. 3159 (1986).
11. In each group appoint one student as judge, two students as representatives for the plaintiff and two students as representatives for the defendant. After members of each group have received the case summaries, allow approximately five minutes for representatives to prepare arguments for their sides. Each group should briefly argue both sides of their issue in front of the class. The "judge" will render a decision based on the arguments presented before the actual higher court decision is announced.
12. At the conclusion of the lesson, inform students that the Supreme Court is currently ruling in favor of students. Stress that students are citizens and are therefore protected by the Constitution. Encourage student awareness concerning upcoming decisions.

EVALUATION

Formative: Student responses during discussion of Amendments, Supreme Court cases, and simulation will be evaluated. Summative: (1) Students will create a poster depicting student rights or illustrate a rights case studied by the class. (2) Students will create a multi-framed cartoon strip telling the story of *New Jersey v. T.L.O.*

TIPS FROM THE TEACHER

Teachers are encouraged to visit with a local attorney concerning local cases and/or particular federal or state rulings that deal with the rights of students. An extension activity might include inviting an attorney to speak to the class concerning this issue. Students at this level also enjoy and learn from conducting a mock trial, either re-enacting an actual case or creating a case of their own. As part of the simulated search, the teacher should make certain that the class had indeed just returned from the restroom (or cafeteria, or playground) so as to coincide with the supposed "accusation" as presented by the principal.

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HANDOUT 1

FOLLOW-UP QUESTIONS
SIMULATED SEARCH

1. Does a teacher have the right to search a student? Why or why not?
2. How would you react if you were searched?
3. Are you willing to give up your right of privacy?
4. How many of you agree with (the "plant")? Why or why not?
5. Are you United States citizens?
6. Are your rights protected by the Constitution.

HANDOUT 2

REACTION TO SIMULATION

1. How did you feel when (principal) came in? Why?
2. How does it feel to be accused?
3. What were your feelings toward (teacher)?
4. How did you feel when ("plant") protested? Why?
5. Would any of you have protested on your own?
6. Should your teacher protect you from a search?
7. Should a teacher search lockers if there has been a bomb threat?
8. Are airport searches legal?

HANDOUT 2

SEARCH AND SEIZURE

New Jersey v. T.L.O.
105 S. Ct. 733 (1985)

On March 7, 1980, a teacher in New Jersey found two girls smoking in a restroom. Since this was a violation of school rules, the teacher took the two students to the principal's office. The Assistant Vice Principal questioned the two girls separately. One student admitted she had been smoking. However, T.L.O. denied she had been smoking in the restroom and claimed she did not smoke at all.

The Assistant Vice Principal asked to see T.L.O.'s purse. When he opened the purse he found a pack of cigarettes and also noticed a package of rolling papers. From his experience, he knew that the possession of rolling papers was commonly associated with the use of marijuana, so he searched the purse more thoroughly. He found a small quantity of marijuana, a pipe, several empty plastic bags, a substantial amount of money, a card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in marijuana dealing.

Thereafter, the State brought delinquency charges against T.L.O. in juvenile court. T.L.O. moved to suppress the evidence that was found in her purse, claiming that the search by the Assistant Principal violated her rights under the Fourth Amendment. The trial court allowed the evidence to be introduced. On appeal the New Jersey Superior Court affirmed the trial court, ruling that there had been no Fourth Amendment violation. The New Jersey Supreme Court reversed, and ordered the suppression of the evidence found in T.L.O.'s purse, holding that the search violated her Fourth Amendment rights.

The State of New Jersey appealed to the United States Supreme Court.

DECISION

New Jersey v. T.L.O.

Issue:
Did the Assistant Vice Principal's search of T.L.O.'s purse violate her Fourth Amendment right to be protected from unreasonable searches and seizures?

Decision:
No. The assistant Vice Principal's search was reasonable under the Fourth Amendment.

According to the Court, school children have a legitimate expectation of privacy in those legitimate items they bring onto school grounds. However, it is necessary to strike a balance between the schoolchild's legitimate expectation of privacy and the school's equally legitimate need to maintain an environment in which learning can take place. Ordinarily a search must be based on "probable cause" to believe a violation of the law has occurred. Schools, however, require a lower standard to accommodate the "privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools." Thus, "the legality of a search of a student should depend simply on the reasonableness, under all circumstances, of the search."

The Court concluded that a search of a student by a school official is constitutionally permissible when:

1) there are "reasonable grounds for suspecting that the search will turn up evidence that the student violated or is violating either the law or the rules of the school,"
2) the search methods and measures adopted by the official "are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

FREEDOM OF EXPRESSION

Tinker v. Des Moines
Independent Community School District
393 U.S. 503 (1969)

In December 1965, a group of adults and students decided to publicize their opposition to the Vietnam conflict by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Several of the students present had engaged in similar activities in the past and they decided to participate in this program.

The principals of the Des Moines schools heard about it and on December 14, they adopted a policy that prohibited the wearing of an armband to school. Students who refused to remove such armbands would be suspended until they complied.

On December 16, Mary Beth Tinker, a thirteen-year-old junior high school student, and Christopher Eckhardt, a sixteen-year-old high school student, wore armbands to their schools. John Tinker, a sixteen-year-old high school student, wore an armband the next day. All three knew about the regulation. They were suspended and were told not to come back until they removed their armbands. They stayed away from school until after New Year's Day, when the planned period for wearing the armbands had expired.

The three students filed a complaint, through their parents, in the United States District Court, asking for an injunction ordering the school officials not to punish them. In addition, they sought nominal damages—a small or token sum of money, generally $1.00, to show that a legal injury had been suffered.

The District Court dismissed the complaint, and the case reached the United States Supreme Court on appeal.

DECISION

Tinker v. Des Moines
Independent Community School District

Issue:
Did the school system's actions violate the students' constitutional protected right of freedom of speech?

Decision:
Yes. The United States Supreme Court held that Tinker's actions, in this situation, were protected by the First Amendment.

Reasoning:
The Supreme Court concluded that:

> First Amendment rights, applied in light of special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate. . . .
>
> The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is no evidence whatsoever of petitioner's interference with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students. . . .
>
> In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. . . .

STUDENTS' RIGHTS AND RESPONSIBILITIES

Fairfax County School Board v. Gambino
564 F.2d 157 (1977)

Cindy Gambino, a student at Hayfield High School, served on the staff of the school's student newspaper, *The Farm News*. In her role as a reporter, Ms. Gambino wrote an article on birth control, incorporating results obtained from a canvass of Hayfield students' attitudes toward birth control. The article was submitted for publication.

Pursuant to a prior agreement regarding potentially controversial material, the article was submitted to the principal for review. The principal perceived that portions of the submission contained information on contraceptives, viewed apart from the information obtained from the canvass. The principal ruled that portions of the article violated School Board notice 6130 which prohibited the schools from offering sex education until a decision was reached on a proposed program, and therefore it was not to be published as written. The principal gave the students the option of publishing the article with the objectionable passages excised; but, they chose to print all or none of the article.

The principal's decision was reviewed and upheld by the Advisory Board on Student Expression, the division superintendent, and the school board. Subsequent to these discussions, students brought a court action to enjoin the county school board from prohibiting publication of the article in the school newspaper. The United States District Court found that the students were entitled to the injunction, and the school board appealed the decision to the United States Court of Appeals for the Fourth Circuit.

DECISION

Issue:
Did the Hayfield Administration/Fairfax County School Board violate the First Amendment rights of Ms. Gambino by restricting publication of the article in the school paper?

Decision:
Yes. The United States Court of Appeals for the Fourth Circuit ruled that the publication of the article was protected by the First Amendment.

Reasoning:
The United States Court of Appeals for the Fourth Circuit found that the secondary school newspaper was conceived, established, and operated as a conduit for student expression in a wide variety of topics and thus fell within the parameters of the First Amendment.

The court rejected the arguments that: the students were a "captive" audience merely because of their compulsory attendance at the school; the newspaper was an official publication and thus part of the curriculum; or the material was suppressible by reason of its objectionability to the sensibility of the school board or its constituents.

THE RIGHT OF FREE SPEECH IN PUBLIC SCHOOLS

Bethel School District No. 403 v. Fraser
106 S.Ct. 3159 (1986)

Matthew Fraser was a student at Bethel High School. In April he gave a speech to around 600 high school students, nominating another student as a school officer. The students could either attend the assembly or go to study hall.

There was a rule against obscene or profane language at Bethel High School. Matthew Fraser had shown his speech to two of his teachers before he gave it. They warned him that it was inappropriate, that he probably should not give it, and that he would probably get in trouble if he did. He gave the speech, anyway, just as he had written it. It contained suggestive language that would be offensive to many people.

During the speech, some students in the audience yelled and hooted, while others seemed embarrassed. When the speech was over, Fraser was called into the assistant principal's office, told that he had broken the rule prohibiting obscene language, and was suspended for three days. He felt that his right to free speech, as protected by the First Amendment, was being violated; therefore, he sued the school board for making that rule.

DECISION

Issue:
Did the school district's policy against obscene and profane language, and the subsequent suspension of Fraser, violate Fraser's First Amendment right to free speech?

Decision:
No. The Supreme Court decided that the school district acted within its authority in punishing Fraser for his indecent speech.

Reasoning:
According to the Supreme Court, the purpose of schools is to prepare students for citizenship. "It is important for the children to learn about the democratic political system, but it is also necessary to take into account consideration of the sensibilities of fellow students." Adults must consider others' feelings and sensibilities in making public speeches, and so must students. In our society the distinction between appropriate social behavior applies to students, too.

Introduction to the Bill of Rights

Pat Curran
Gary Strauch

Oak-Land Junior High School
Stillwater, Minnesota

INTRODUCTION

This activity was developed to shock fifteen-year-olds into the realization that the Bill of Rights does affect them. The activity tries to get the students angry at the unfairness of the proposals and to create a need for them to know and use the Bill of Rights to defend their positions. It creates a "them versus us" situation, where they feel a need to learn how to use the Bill of Rights against this unknown group and their proposals. It is a discovery lesson and the students can and do find appropriate amendments to be used as part of their presentation to the school board.

AUDIENCE

This activity is presently being used in a ninth-grade civics class, but the idea of taking away students' rights could be used at any level.

TIME TO COMPLETE

The activity may go for three class periods. The presentation of this activity is designed for one class period. The discussion, research, and questions may take most of a second class period. The third class period may involve guest speakers, such as a school board member, an attorney, or the school principal.

GOALS

As a result of this lesson, students will:

- begin to develop an understanding of the Bill of Rights
- understand the relevance of the Bill of Rights to junior high school students
- appreciate the limits placed on government by the Constitution and the Bill of Rights

MATERIALS

- Handout 1: Board of Education Proposal
- Copy of Bill of Rights

PROCEDURES

Day 1

1. Basically the teacher needs to become an actor/actress for this activity. The teacher reads the Board of Education proposals as if they were in fact being presented to the school board for possible approval. Play it straight. Explain that this is the first you have heard of these proposals and that because this is a civics class it would be appropriate to discuss student reaction to these proposals. Remind the students that these are just proposals and they have not been approved by the school board as of yet. State that, from what you understand, a parent group which is concerned with stopping drug use in schools authored the proposals. (As you read through the proposals you may need to define some of the terminology.)
2. State that you heard that the group in favor of these proposals feels that there are students who do not want to get an education and are causing trouble in school. The parents involved in supporting these proposals see these proposals as an effective way to remove these students. This parent group feels that these trouble makers are taking time away from other students who are in school to learn. (The end justifies the means.)
3. As students discuss these proposals, the teacher should play the devil's advocate by making statements such as:
   a) No one will be hurt by this proposal; random drug testing is being done to professional athletes, policemen, firemen, teachers, and other groups within our society. Why not students?
   b) Schools are where most of the drug problems exist. Why not stop the problem early?
   c) With all the talk about AIDS and checking blood for the disease, this is just the next logical step.

d) Who will be affected? Just the people who have something to hide. If you haven't done anything wrong, you have nothing to fear from the proposals.

e) Students are minors and don't have the same rights as adults.

f) Express the idea that only the people who deserve trouble are going to be affected by these proposals.

g) What's the big deal? So what if they pass these proposals? What difference will it make in your lives? If you aren't a suspect it doesn't affect you.

h) Why shouldn't these types of proposals be passed? Are there any safeguards against these proposals?

i) Would your parents support these proposals?

The discussion at this point may become heated and many students may want to know what they can do to defeat the proposals. The students should be informed that the school board will be hearing these proposals at the next board meeting. Students may wish to appear before the school board to argue either in favor or against these proposals. Ask the students for ideas as to arguments that could be used to influence the school board at this meeting.

Day 2

4. Hand out copies of the Bill of Rights and copies of the proposals to the students. At this point, the teacher may wish to use a large group discussion, small group, or have the students work individually to find the amendments that protect students from the actions proposed by this parent group. The teacher may wish to review the various proposals, one at a time, and ask the students to find the amendments that would protect them from that action. The teacher may wish to have students develop questions to ask a school board member, an attorney, and/or a school principal as they relate to the proposals and the violation of student rights the proposals may cause.

Day 3

5. The teacher may want to have a member of the school board, an attorney, the school principal or the district superintendent in the classroom on the third day of the activity to answer questions raised by the students. Discussion can deal with how the school board deals with pressure groups, censorship, how decisions are made that impact on thousands of students and how student rights are protected. Ask the guest speaker to react to the proposals. (Try to give a guest the proposal list a week or so in advance so he/she has time to review it.)

EVALUATION

The activity is designed as an introductory activity to develop student interest in the Bill of Rights. The activity could lend itself to evaluation by developing situations similar to the ones in the proposals and have the students identify the rights that have been violated by using their knowledge of the Bill of Rights.

TIPS FROM THE TEACHER

Inform your principal of what you are doing and give him/her a copy of the proposals. This will help with any phone calls from parents. Try to play it straight the first two days of the activity. Play the role of someone who understands the students' feelings and also feels that some of these proposals are unfair. Try to let the students discover how the Bill of Rights can help them to defend their position against these proposals. The idea of an unknown outside group taking away freedom worked well in developing interest and anger. The teacher has to walk a fine line to be convincing and believeable. You have to read the class and say or do things that convince them these proposals are for real. This activity allows the teacher and students to work against this unknown group, which can draw a class together.

HANDOUT 1

BOARD OF EDUCATION PROPOSAL

1. All secondary students will be given urinalysis at the beginning of the school year.
2. All students must, at any time during the year, submit to additional, random urinalysis tests at the discretion of the principal or his agent.
3. All students will submit to random locker searches.
4. All students will submit to random (at the will of the principal or his agent) personnel searches—female students by female school personnel and males by male school personnel.
5. All female students will have their purses searched when entering or leaving a lavatory.
6. All male students will be "pat" searched and have their pockets turned when entering or leaving a lavatory.
7. Any student resisting the program listed above for any reason shall be subject to suspension from school for the remainder of the school year at the discretion of the school principal.
8. Formal student dismissal hearings will be abolished. Dismissal will result following an interview between the principal and the student. Parental participation at this interview will be at the discretion of the school principal.
9. Any student caught smoking in school will be suspended from school for a minimum period of five days for the first offense. Proof of such offense will be the reasonable suspicion of the principal or of a teacher. Possession of a cigarette is not necessary for such suspicion to be deemed reasonable.
10. Items deemed inappropriate by administrators or teachers (radios, jewelry, etc.), will be confiscated and sold. Proceeds from such sales will be donated to local food shelves.
11. Students may be suspended for drug use or drug possession. Acceptable proof of such use or possession may be provided by testimony of anonymous witnesses.
12. Students suspended for drug use or drug possession will be given over to the custody of an appropriate juvenile detox facility.
13. Students will not be allowed to wear inappropriate earrings or clothing. Students judged to be dressed in an inappropriate manner will be taken home by their parents immediately following notification of the dress code offense. Students will be allowed to return to school when school administrators have deemed them to be dressed in clothing more consistent with the norm.
14. Students may not color their hair.
15. Students seen with known rules violators will be placed under administrative suspicion and will be subject to weekly searches and drug testing.

Freedom of Religion

Deborah English

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INTRODUCTION

This lesson is designed to acquaint students with religious freedom in the public schools. It is divided into four major areas: 1) a case study approach to looking at Supreme Court cases reievant to religion in schools; 2) the relationship of these issues to the First Amendment; 3) application of court procedure, knowledge of law, and use of past Supreme Court rulings in a role-playing activity; 4) practical knowledge of the subject through a lawyer's visit to the classroom. In the early decades of our history, the First Amendment was considered applicable only to the national government. In recent years, however, its powers have been extended to the states; this extension has helped to clarify the meaning of the "Establishment Clause." This lesson will allow students the opportunity to explore the constitutional concept, separation of church and state, within the public school systems.

AUDIENCE

9th – 12th grade American Government students

TIME TO COMPLETE

Each case can be used independently of the others. Individual cases are designed to take one hour each day; therefore, this role-playing activity might take 2 to 3 days.

GOAL

As a result of this lesson, students will:

- understand some important First Amendment rights concerning religion
- understand some of the unanswered issues related to the religious rights of students

MATERIALS

First Amendment Cases: Engle v. Vitale, Abington v. Schempp, Wallace v. Jaffree.

PROCEDURES

1. Have students read the First Amendment. Discuss the following questions:

   What do you think the phrase "freedom of religion" means?

   Do you believe that freedom of religion means that individuals can perform whatever religious rites they choose? What if these practices violate the rights of others?

   What does the "Establishment Clause" mean?
2. Invite a local lawyer to the classroom to discuss aspects of the attached cases. Have them discuss the following questions with the attorney:
   a. What are the major issues raised by the case?
   b. How are these issues related to the First Amendment "Establishment Clause?"
   c. Who has an interest in these issues? Why?
   d. Do public school teachers or students have a right to attend religious meetings or discuss religion during school hours?

      What arguments would you use to support your position if you were the student, the principal, or the parents involved in each case?
3. Divide the class into groups of 2-3 students. Assign each group an actual Supreme Court Case to examine the constitutional issues related to religion in the public schools.
   A. The following are suggested cases to be used:
      1. Engel v. Vitale (1962)
      2. School District of Abington Township v. Schempp (1962)
      3. Wallace v. Jaffree (1983)
   B. The following questions should be analyzed by each group for their case:
      1. Review the facts:
         a. What happened in this case?
         b. Who are the parties involved?
         c. Which facts are important? unimportant?
         d. Is there any significant information missing?
      2. Frame the issue:
         Students should pinpoint and discuss the issues or problems presented by the case. The issues should be presented in the form of questions. Some areas to be

        considered: legality, public policy, ethics, and practical knowledge.
        3. Discuss the arguments:
            a. What are the arguments for and against each point of view?
            b. Which arguments are the most persuasive? Least persuasive? Why?
            c. What are the alternatives, if any?
        4. Reach a decision:
        This should be shared with other groups. After this occurs, the teacher may discuss the actual Supreme Court decision.

4. To explore further the Establishment Clause of the First Amendment, the groups will have an opportunity to role-play their case before the United States Supreme Court.
    A. Divide the class into three groups:
        1. Attorneys for the plaintiffs (representing students and parents opposed to religious practices in the schools)
        2. Attorneys for the defendants (representing superintendents of schools and school board)
        3. United States Supreme Court—A panel of seven to nine judges.
    B. After the students have had time to prepare their arguments, have the Court convene. Each side will have 15 minutes to argue its case. After the arguments, each side will be allowed five minutes for rebuttal. The teams should be given time to discuss the points the other team has made and how they might have argued against them. After arguments have been heard, the judges will deliberate and present their decisions. The affirming and dissenting opinions can be decided by a show of hands. Class discussion of the reasoning for such decisions should follow.

EVALUATION

Teacher should do an ongoing observation to be sure that the overall concepts are being understood. This can be in the form of a content quiz. To be sure that the students can apply these concepts, have students write up their own hypothetical case. Have the students swap cases and review them according to the format used in the lesson. They should be able to analyze the facts and the issues, formulate an argument, and reach a decision based on law and previous court rulings.

TIPS FROM THE TEACHER

1. Contact the local chapter of the Young Lawyers division of the American Bar Association. They are always willing to be of legal assistance.
2. Use various state constitutions to reinforce any provisions regarding religion in public schools.
3. Contact the local board of education regarding any local policy.
4. Be sure students have had some knowledge of the Federal Court system prior to this lesson.
5. Throughout the discussions, there may be some conflicts among the different beliefs of the students. Disagreement is healthy as it allows students to grow. Depending on classroom setting and local policies, the teacher may have to "guide" some of the discussions or intervene when necessary.
6. Variations of Lesson: When conducting a case study, the teacher may wish to try one of the variations on the case method. Typical ones include:
    a. Giving students an entire case.
    b. Giving students unmarked opinions.
    c. Giving students only the facts.
7. Have students look through current newspapers and magazines for stories related to this topic or expand it to include all the First Amendment freedoms.

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Organizations to Contact:

American Bar Association
Special Committee of Youth Education for Citizenship
750 N. Lake Shore Drive
Chicago, IL 60611

Constitutional Rights Foundation
1510 Cotner Avenue
Los Angeles, CA 90025

Social Issues Resources Series, Inc.
P. O. Box 2507
Boca Raton, FL 33427

HANDOUT 1

Engel v. Vitale (1962)

Facts of Case:

In 1958 the Board of Education in New Hyde Park, New York, gave the school principal a prayer that each child was to say out loud at the beginning of each school day. Children who did not want to say the prayer were allowed to remain quiet or to leave the classroom. The parents of ten children went to court to complain that the use of this prayer in the schools was against their religious beliefs or practices. They said that prayer was something for the home and the church. They also said that to have such prayers in school partly forced children to say the prayer, for if they did not they would be made fun of by the other children.

Decision

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious.

The petitioners contend among other things that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

Abington School District v. Schempp (1963)

Background

In 1958, the Pennsylvania legislature passed a law directing that "at least ten verses from the Holy Bible" be read at the beginning of each school day. The next year the law was amended to allow any child to be excused from the readings "upon the written request of his parent or guardian." At Abington Senior High School, the verses were read over the school's intercom as part of the regular morning announcements. The students were also requested to stand and repeat the Lord's Prayer in unison just before the flag salute. The Bible verses were read without any accompanying statements or explanations. Students and parents were informed that each student had the right to either leave the room during the reading or remain in the room and not participate.

The law was challenged by the Schempp family, which was of the Unitarian faith and whose children were enrolled at Abington High School. The Schempps claimed that the law was an unconstitutional support of religion, and also of particular denominations, by the state. The Supreme Court affirmed this position in Abington School District v. Schempp (1963), a landmark case involving the First Amendment prohibition against laws "respecting an establishment of religion."

Decision

"It is true that religion has been closely identified with our history and government. . . . The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life. . . .

This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life. . . .

The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of [certain students]. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of constitutionality under the Establishment Clause. Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent. . . ."

Wallace v. Jaffree (1985)

In 1981 the State of Alabama passed a law authorizing a "one-minute period of silence in all public schools for meditation or voluntary prayer." Ishamel Jaffree, a resident of the city of Mobile, an agnostic and a lawyer, objected to this law. He went to federal court to have the law declared unconstitutional under the 1st Amendment applied to the States through the Due Process Clause of the 14th Amendment. Suit was brought against the officials of the state including the Governor, George Wallace, whose name appears on the case title.

At the trial before the Federal District Court, the chief sponsor of the law in the state legislature admitted under oath that his purpose in supporting the law was "an effort to bring voluntary prayer to our public schools." The District Court judge, contrary to findings in earlier cases, held that "the Establishment Clause of the 1st Amendment to the United States Constitution does not prohibit the State from establishing a religion." This conclusion was based on what the judge determined was newly discovered historical evidence. The Court dismissed the suit. Jaffree appealed, and the United States Court of Appeals reversed the District Court ruling. The State of Alabama appealed to the Supreme Court of the United States.

Decision

Justice John Paul Stevens delivered the opinion for the six-member Court majority. Justices Lewis Powell and Sandra Day O'Connor filed separate concurring opinions with the majority while Chief Justice Warren Burger and Justices Byron White and William Rehnquist dissented.

Stevens' opinion affirmed the decision of the Court of Appeals that the Alabama law did violate the Establishment Clause of the 1st Amendment. That amendment "intended to curtail the power of Congress to interfere with the individual's freedom to believe . . . in accordance with the dictates of his own conscience." It has been applied to the States through the Due Process Clause of the 14th Amendment. This freedom "embraces the right to select any religious faith or none at all."

In the case of Lemon v. Kurtzman in 1971 the Court had established the criteria for examining the Establishment Clause. There are three criteria: the law must have a secular legislative purpose; its primary effect must be one that neither advances nor inhibits religion; and it must not foster "an excessive entanglement with religion."

Stevens said that it was unnecessary to go beyond the first of these criteria. In this law "the state did not show evidence of any secular legislative purpose." The author of the law had admitted at the trial level that his purpose was to bring voluntary prayer to the schools, clearly a purpose that is not secular. The problem with the law, said Stevens, is that it contains the addition of the words "voluntary prayer." "The addition of 'or voluntary prayer' indicates that the State intended to characterize it as a favored practice." This is "quite different from merely protecting every student's right to engage in voluntary prayer during an appropriate moment of silence." It is an endorsement that is inconsistent with the established principle of government neutrality toward religion.

In his dissenting opinion Chief Justice Warren Burger stated that "it makes no sense to say that Alabama has 'endorsed prayer' by merely enacting a new statute 'to specify expressly that voluntary prayer is one of the authorized activities during a moment of silence.'" He continued, "The statute 'endorses' only the view that religious observances of others should be tolerated, and where possible, accommodated." In the majority opinion, Burger said, "The mountains have labored and brought forth a mouse."

"Don't Touch My Hair!" Freedom of Expression at School

Rodney Hanson

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INTRODUCTION

Does the First Amendment protect students' "freedom of expression" at school in relation to hair length and dress codes? How far did Tinker v. Des Moines extend students' rights to free speech? Are questions on grooming and dress limited only by the guideline that there not be "a material and substantial disruption to the education process"? These questions and more will be analyzed in the following activity as students explore the meaning of "freedom of expression" at school. Through a creative attention getter, examination of case studies, and an analysis of the current school dress code, students will develop a deep appreciation of their constitutional rights. This is an ideal lesson to get the students interested in studying the Bill of Rights, particularly the First Amendment. It is of high interest because of its relevance to the daily life of a student.

AUDIENCE

This lesson might be used with any ninth through twelfth grade course studying the Bill of Rights. It would be advantageous, but not mandatory, that students previously study Tinker v. Des Moines.

TIME TO COMPLETE

Two or three class periods

GOALS

As a result of this lesson, students will:

- develop an understanding of the First Amendment implied "freedom of expression" in the school and the limitations on that freedom
- discuss and analyze several important case studies dealing with school dress codes and regulations
- understand the basic guidelines set by the federal courts which schools must follow in establishing dress codes
- analyze their school's current dress code for compliance with constitutional guidelines

MATERIALS

1. Teacher handouts: "You Be The Judge: Case Studies. in Freedom of Expression at School." "Case Studies." "Federal Court Guidelines for School Dress Codes" (Handouts 1, 2 and 3)
2. A copy of the school's current dress code (Handout 4)
3. A copy of a proposed new dress code (that the teacher has created to create an increased level of concern among the students)

PROCEDURES

Day One

1. Begin class by reviewing the previous day's lesson (Tinker v. Des Moines or other freedom of expression cases). Review the limitations on freedom of expression at school.
2. Approximately five minutes into the period, have the office interrupt the class with an announcement that the school board is proposing a new dress code for the school. This announcement and the reading of the new code could be read over the loudspeaker only to your class or could be delivered to you in a written memo by an office aide. The teacher will need to create a dress code that will create resentment, but yet still be believable among the students. (See Handout 4)
3. Lead the class in a discussion about the proposal. Focus in on: Is it fair? Is it legal? Is it constitutional? What about expression at school? Does Tinker v. Des Moines apply here? Etc.
4. Hand out the reading "You Be The Judge: Case Studies in Freedom of Expression at School" (Handout 1). Read orally the first case, Breen v. Kahl, and discuss the questions on the handout. After explaining the court decision to the students, have them work in groups of two on the cases Ferrell v. Dallas and Karr v. Schmidt. These three cases and analysis will be the homework assignment for the night.

Day Two

1. Lead the class in a discussion of the cases Ferrell and Karr. Be sure that students understand

that the U.S. Supreme Court has never accepted a case dealing with dress codes and school. The Court has consistently maintained that school grooming standards are purely handled solely by the lower courts. (See teacher handout on the case study decisions, Handout 2.)

2. Hand out to the students the reading: "Federal Court Guidelines for School Dress Codes." Make sure students understand the five standards schools should follow in limiting freedom of expression in regards to grooming and dress. (Handout 3)
3. For homework, hand out a copy of the real student dress code for your school. (See Handout 4 as an example.) Students will analyze the regulations in light of the guidelines established by the federal courts. Is it fair? Is it reasonable? Does it follow the guidelines? In what areas could change be introduced?

Day Three

1. Lead class in a discussion of the current dress code. Encourage students' suggestions on how it could be changed. This would be an excellent opportunity to invite your principal into the class to help lead the discussion.
2. Have students work in groups of two on a new dress code for the school. Make sure students understand they must follow the guidelines established by the federal courts. This will be the homework activity for the night. Hopefully, some positive changes (if they are needed) will result from this three-day lesson.

EVALUATION

The three homework assignments are high interest level projects that will be useful in checking for students' understanding. Include questions on the case studies as well as the federal court guidelines on your test on the First Amendment.

TIPS FROM THE TEACHER

In order for the attention getter to succeed (the "proposed new dress code") the teacher must act totally surprised by the announcement. You are the key to making this announcement believable. Some students will not believe it at first, but don't back down. Keep role playing it! Also, make sure that students understand that freedom of expression does have limitations at school. Avoid turning this into a gripe session on the school's rules! This activity will work with younger students if the teacher is willing to rewrite the case studies at a lower reading level. Other alternatives to the attention getter might be for the teacher to come to the class dressed in outlandish garb to "hook" the students, a student could be "planted" in the class who is wearing clothes in violation of the dress code, or the teacher could bring in pictures and slides of different styles of dress since the 1950's.

Other court cases dealing with school dress codes include:

New Rider v. Board of Education of School District 1, Pawnee County, Oklahoma, 28 F.2d., (1973).

Dawson v. Hillsborough County, Florida, School Board, 5 Circuit, 1971, 445 F.2d 308 (1971).

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HANDOUT 1
"YOU BE THE JUDGE"
CASE STUDIES IN FREEDOM OF EXPRESSION AT SCHOOL

Case #1: Breen v. Kahl (296 F. Supp. 702, 1969)

William Bay High School had adopted this policy affecting male students in school:

"Hair should be washed, combed, and worn so it does not hang below the collar line in the back, over the ears on the side and must be above the eyebrows. Boys should be clean shaven and long sideburns are out."

Tom Breen was expelled from school in 1968 for being in violation of the school dress code (his hair was too long) and would not be readmitted until it was cut. The superintendent of the school district stated that Breen's refusal caused "a disruptive influence or factor within the school." At the expulsion hearing the school presented no evidence that demonstrated any disruption had taken place.

Questions for thought and discussion:

1. Was Breen denied his constitutional rights? Which ones? Why?
2. Do you think that Tinker v. Des Moines applies to this case? Why or why not?
3. Does the First Amendment protect freedom of expression in regards to dress codes at school?
4. Does the Ninth Amendment apply in this case? Is the right to wear one's hair the way he/she chooses an "unlisted" right protected by the Constitution?

CASE #2: Ferrell v. Dallas Independent School District (392 F.2d 697, 1968).

Three students at Dallas High School were members of a rock-and-roll band. The manager of the band required that all members have "Beatle-type" haircuts to increase the band's appeal to their audience. In September of 1966, all three students were denied enrollment at Dallas High School due to a violation of the school dress code regulating hair length. In protest, the band recorded a song entitled "Keep Your Hands Off It" that received local radio air play for several weeks. The students sued the school on the grounds that their First Amendment rights (freedom of expression) and Fourteenth Amendment rights (to property under the due process clause) were violated.

Questions for Thought and Discussion

1. Were the three students protected by the Constitution? Explain.
2. Some disruptions did occur over the issue of long hair on boys at the school. Would this affect your decision in the case?
3. Do the boys have a "property interest" at stake? What are your opinions on this argument?
4. How does this case differ from Tinker v. Des Moines? What were the students "expressing" in the Ferrell case?

Case #3: Karr v. Schmidt (460 F.2d 609, 1972)

The El Paso School District had the following hair length regulations:

"Hair may be blocked, but is not to hang over the ears or the top of the collar of a standard dress shirt and must not obstruct vision. No artificial means to conceal the length of hair shall be permitted."

Ches Karr, a student, attempted to enroll at Coronado High School in El Paso. He was denied admission until he cut his hair. At Karr's hearing, school staff testified that students with long hair created distractions in the classroom, and disciplinary, health, and safety problems. Other staff testified that enforcing the regulation caused more trouble than the "disruption it seeks to prevent."

Questions for thought and discussion:

1. How would you have ruled in this case? Why?
2. What types of dress codes should schools have? What guidelines should schools establish? Give examples.
3. Was Ches Karr given his "due process" rights in this case? What basic due process should Karr have been given before he was denied enrollment?

HANDOUT 2
CASE STUDIES—DECISIONS

1. *Breen v. Kahl*
   The U.S. District Court of Wisconsin ruled in favor of Breen. The court stated that "freedom to wear one's hair at a certain length is constitutionally protected." In order to deny students this right "a substantial burden of justification" must be shown by the school in terms of health, physical danger to others, or distraction of others from their various pursuits.
2. *Ferrell v. Dallas*
   The 2nd U.S. Circuit Court ruled in favor of the school district. The court stated that the school has a "compelling reason to maintain an efficient school system." Schools, therefore, have the right to restrict freedom of expression to provide quality education. The students' property claim was denied on the grounds that "at this stage of the appellants' lives, school may be more important than their commercial activities."
3. *Karr v. Schmidt*
   In an unusual move, fifteen judges of the Fifth Circuit Court of Appeals, sitting en banc, decided the case of Karr v. Schmidt in an 8-7 decision. The judges ruled against Karr and stated that this was a local affair. Since the U.S. Supreme Court has never accepted a school dress code case, Karr has become the standard against which basic guidelines were established. (See Handout 3.)

HANDOUT 3
FEDERAL COURT GUIDELINES FOR SCHOOL DRESS CODES
(A summary of lower court rulings with special emphasis on *Karr v. Schmidt*)

1. Dress codes must be specific and clearly understood by all students.

2. The regulations must be reasonable and not arbitrarily enforced.

3. The school must have a compelling interest to accomplish an educational objective in establishing the dress code.

4. The regulation must not be discriminatory in application.

5. Schools can regulate dress that is obscene, hazardous to health, or distracting to the education process.

HANDOUT 4
SAMPLE BULLETIN

Re: New Dress Code for "Redmond" High School

In order to promote school unity and discipline at "Redmond" High School, the Board of Directors of the Redmond School District last night adopted the following guidelines for dress and grooming of all high school students:

A. Males:
  1. All male high school students and staff will be required to wear dress shirts, dress slacks (cords are acceptable, but no jeans), and dress shoes to school at all times. (Physical education classes to be excluded.)
  2. All males' hair length shall be worn so that it does not touch the collar line in back, does not hang over the ears, or obstruct the vision of the student or staff person. Punk, mohawk, and pony-tail type haircuts will not be allowed. No dyed hair will be permitted.

B. Females:
  1. All female high school students and staff will be required to wear dresses or skirt/blouse combinations to school. Any pants or shorts worn by females will not be allowed. Dresses shall not be shorter than one inch above the knee.
  2. Females will not be allowed to wear excessive make-up.
  3. No punk or new wave hair styles will be allowed.

C. Violation of these rules will result in immediate suspensions for students until the violation is corrected.

D. Staff violations will be grounds for dismissal.

From Tinker to Fraser: Freedom of Speech in Public Schools

Mary Oppegard

Shawnee High School
Shawnee, Oklahoma

INTRODUCTION

Free speech in the public schools is a topic of immediate interest to students. This lesson gives students a chance to compare the decisions in the landmark Tinker case and the recent Fraser case. Students will examine court interpretations as to what kind of speech is protected in school by the First Amendment. Students will read the actual language of the court in both the majority and dissenting opinions. Role play and mock Supreme Court hearings will develop interactive involvement among the students. Discussions of the Constitution may become esoteric unless students can see application of basic rights to their own experience. The right to freedom of speech can come alive when students are involved in case studies which directly affect the schools.

AUDIENCE

High school classes

TIME TO COMPLETE

Four or more class periods are recommended.

GOALS

As a result of this lesson, students will:

- understand the role of the federal judiciary in protecting civil rights
- understand the decisions in the Tinker and Fraser cases and be able to explain the reasoning of the court
- recognize influences which affect interpretations of the Constitution and the Bill of Rights
- explain how Supreme Court decisions affect local school district policy

MATERIALS

Handout 1—Background Material on Freedom of Speech

Handout 2—*Tinker v. Des Moines Independent Community School District*

Handout 3—Decision: *Tinker v. Des Moines*

Handout 4—*Bethel School District, No. 403 v. Fraser*

Handout 5—Decision: *Bethel v. Fraser*

Handout 6—Quotations

PROCEDURES

1. Introduce the unit with a discussion of the First Amendment. See Attachment 1 for a summary
2. Distribute Handout 2—*Tinker v. Des Moines* to all students. Read the facts of the case and discuss the questions. Make sure students understand the key issues of the case. Hand out Attachment 2—*Tinker v. Des Moines* to all students.
3. Conduct a role play of the various people involved in the case. Divide the class into groups of six students. Assign each student in the group one of the following roles:

   Mary Beth Tinker

   John Tinker

   Another student who wears political buttons

   A teacher at the school

   The principal

   A parent who does not want his child exposed to the controversies of the Viet Nam War in school.

   Have each student in the group present arguments in the case from his/her point of view. Debrief by asking each group to summarize key points made by each person.
4. Distribute Handout 3—Decision: *Tinker v. Des Moines.*
5. In the same groups, have students read the majority and dissenting opinions. List the two most persuasive arguments in the majority opinion and the two least persuasive arguments. Do the same with the dissenting opinion. Justice Hugo Black was known for his staunch support of First Amendment rights for adults. His opinion in this case was seen

by some as an apparent reversal of this position. Discuss what might have motivated his action.

6. Distribute Handout 4—*Bethel v. Fraser.* Have students read the facts of the case and discuss the issues as in numbers 3, 4, and 5 above.
7. Conduct a mock appellate hearing. (If time does not permit this activity, move to number 9 below.) Select nine students to play the Supreme Court. Ask them to prepare questions to ask the attorneys who will present arguments in the case. Have the rest of the class prepare arguments for appellant and appellee. Have groups of two to three students prepare one or the other side and select one appellant group and one appellee group to make presentations.
8. Set up the room like the Supreme Court. Allow each side 8 minutes to present its case and judges 8 minutes to ask questions. A two-minute rebuttal is allowed each side. Following oral argument, judges retire to reach a decision. Have the judges explain their reasoning when they deliver the decision.
9. Distribute Handout 5—Decision—*Bethel v. Fraser* and have class read it. Debrief the lesson by discussing the following questions:
    (1) What are some similarities in Tinker and Fraser? Some differences?
    (2) What effect did the Tinker and Fraser speeches have on students? Might this have any bearing on the decision in the cases?
    (3) How were the issues similar in both cases? Different?
    (4) Do you think the Fraser decision is a reversal of the Tinker case? Why or why not?
10. Research and investigate local policies with regard to freedom of speech, including interviewing a principal, superintendent and local attorney as well as other community resources.

EVALUATION

- After the cases are discussed, but before the role playing activity, you might administer a short quiz to evaluate understanding of judicial procedure, basic issues in the case, and basic terminology, such as concurring and dissenting opinion, symbolic speech, compelling state interest, disruptive conduct
- Student participation is evaluated by teacher observation
- A criterion reference and an essay test might be given at the end of the unit. Another evaluation method is to divide students into groups of three and write a school policy using the Tinker and Fraser rulings as guidelines

TIPS FROM THE TEACHER

Your local Bar Association and/or a local attorney may provide copies of the cases, and advice on conducting an appellate hearing, etc. My principal came to class to discuss and defend local policies.

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HANDOUT 1

BACKGROUND OF FREEDOM OF SPEECH

1. By way of introduction, a brief lecture on freedom of speech in the American constitutional system. The following basic information is gleaned from *Street Law*, pages 312-320. You may want to add appropriate examples from your and your students' experience to liven it up.
   a. Rights guaranteed in the Constitution are not, and cannot be, absolute. Total free exercise of certain rights would in some instances restrict the rights of others. For example, no one has the right as a joke to yell, "Fire!" in a crowded theater. Courts must balance one right or interest against another.
   b. Freedom of speech is among the most difficult to resolve, but it is at the heart of an open, democratic society. It protects everyone, even unpopular or unconventional ideas. At the core is the balance of the need for peace and public order against the fundamental right to express one's point of view.
   c. At times freedom of expression may be limited by government action: obscenity, defamation, fighting words, and commercial speech.
   d. Restrictions may also be placed on the time, manner, and place of free expression, but some ideas may not be favored over others.
   e. Laws governing free speech must be clear and specific.
   f. The court has used different legal tests to untangle the balance of general welfare and public order: clear and present danger, balancing act, and incitement.

Legal Terms in Connection with Freedom of Speech

1. Defamation—false expression about a person that damages that person's reputation.
2. Slander—spoken defamation, only if expression was false, damaging with either malice or with reckless, almost intentional, disregard for the truth.
3. Libel—written defamation, only if expression was false, damaging with either malice or reckless, almost intentional, disregard for the truth.
4. Obscenity—anything that treats sex or nudity in an offensive or lewd manner or that exceeds recognized standards of decency.
5. Commercial speech—advertising.
6. Fighting words—words spoken face-to-face so abusive or threatening as to cause a breach of the peace between the speaker and the listener, a verbal slap in the face.
7. Symbolic speech—nonverbal conduct that expresses an idea: sit-ins, flag-waving, demonstrations, wearing of armbands and protest buttons.
8. Clear and present danger—clear and present danger of a substantial violation of the law.
9. Balancing act—courts balance the individual's interest in free expression against the interest the government seeks to protect by prohibiting the expression.
10. Incitement test—speech can be prohibited only when it is directed toward inciting or producing immediate lawlessness and is likely to produce such action.

HANDOUT 2

Tinker v. Des Moines Independent Community School District (1969)

In December, 1965, a group of adults and students decided to publicize their opposition to the Vietnam conflict by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Several of the students present had engaged in similar activities in the past, and they decided to participate in this program.

The principals of the Des Moines schools heard about it and, on December 14, they adopted a policy that forbade the wearing of an armband to school. Students who refused to remove such armbands would be suspended until they complied.

On December 16, Mary Beth Tinker, a 13-year-old junior high school student, and Christopher Eckhardt, a 16-year-old high school student, wore armbands to their schools. John Tinker, a 16-year-old high school student, wore his armband the next day.

Although some students argued about the Vietnam War in the halls, no violence occurred as a result of the armbands. All three students knew about the regulation. They were suspended and were told not to come back unless they removed their armbands. They stayed away from school until after New Year's Day, when the planned period for wearing the armbands had expired.

The three students filed a complaint, through their parents, in the United States District Court, asking for an injunction ordering the school officials not to punish them. In addition, they sought nominal damages—a small or token sum of money (generally $1.00) to show that a legal injury had been suffered.

The District Court dismissed the complaint.

Questions to Consider in the Tinker Case

1. What are the important facts of the case?
2. Should wearing armbands be considered a form of free speech?
3. If it is considered speech, should this type of expression in the schools be protected by the First Amendment?
4. Why would school administrators want to limit this type of expression?
5. Should the Tinkers have been suspended? Why or why not?

HANDOUT 3

Decision: *Tinker v. Des Moines*

In a 7-2 decision the Supreme Court decided for the Tinkers, reversing the lower court. Abe Fortas wrote the majority opinion; Justices Stewart and White wrote concurring opinions. Justice Hugo Black wrote the dissenting opinion. Justice Harlan also dissented. The vote lined up as follows:

Majority—Abe Fortas, Potter Stewart, Byron White, Earl Warren, William Brennan, Thurgood Marshall, and William Douglas

Dissenting—Hugo Black, John Harlan

Excerpts from the Majority Opinion,
Justice Abe Fortas

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. . . . Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom. . . .

[The students] caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

Excerpts from the Dissenting opinion,
Justice Hugo Black

While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. . . .

I deny, therefore, that it has been the "unmistakable holding of this Court for almost 50 years" that "students" and "teachers" take with them into the "schoolhouse gate" constitutional rights to "freedom of speech or expression." . . . The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue. . . . It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. . . .

The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. . . . Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students.

HANDOUT 4

Bethel School District v. Fraser (1986)

On April 26, 1983, Matthew N. Fraser, then a seventeen-year-old senior at Bethel High School in Tacoma, Washington, nominated a friend and classmate for school office at a student-run assembly of 600 called for that purpose.

Fraser's nominating speech contained sexual references and profane language. The speech drew a variety of responses. Students hooted and hollered, some seemed embarrassed, and some were seen making what appeared to be sexual gestures. As a result of the speech one teacher reported that ten minutes of her class time was taken up with discussion of the speech. No other evidence of disruption of the educational process was reported.

The day after he delivered the speech, Fraser was asked to report to the assistant principal's office and to produce a copy of the text of his speech. At the meeting, Fraser was given notice that he was being charged with violating the school's disruptive conduct rule. (Disruptive Conduct: Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures.) After he was given an opportunity to explain his conduct, Fraser was suspended for three days. Fraser, who was a member of the Honor Society and the debate team and the recipient of the "Top Speaker" award in statewide debate championships for two consecutive years, was also informed that his name would be removed from a previously approved list of candidates on the ballot for graduation speaker. Even though his name was stricken from the ballot, he was elected a graduation speaker by his classmates on a write-in vote, receiving the second highest number of votes cast. The District, nevertheless, continued to deny him permission to speak.

Questions for discussion

1. Should Matthew Fraser's speech be protected by the First Amendment?
2. What are the similarities and differences with the Tinker case?
3. Should Fraser have been suspended?
4. Would Fraser's speech be protected if he gave it off the school campus?

HANDOUT 5

Summary of Decision: *Bethel v. Fraser*

In a 7 to 2 decision the Supreme Court decided that the school district acted entirely within its permissible authority in imposing sanctions upon Matthew Fraser. His lewd and indecent speech had no claim to First Amendment protection. Since there was a school rule which prohibited "obscene" language and since teachers warned Fraser that his lewd speech could subject him to sanctions, he was given adequate notice that he would violate school rules.

Chief Justice Warren Burger wrote:

> It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. The school board has an interest in protecting minors from exposure to vulgar and offensive spoken language and has the authority to identify such language as inappropriate and subject to sanction.

Justices Marshall and Stevens dissented on the grounds that the court failed to prove that the remarks were disruptive. They also argued that Matthew Fraser, a bright student respected by his peers, was in a better position to determine whether his contemporaries would be offended by a sexual metaphor than a group of judges three generations and 3,000 miles removed from contemporary community standards.

The vote lined up as follows:

Majority—Burger, Blackman, Brennan, Powell, O'Connor, White, Rehnquist

Dissenting—Marshall, Stevens

HANDOUT 6

QUOTATIONS

Congress shall make no law . . . abridging the freedom of speech.

First Amendment
U.S. Constitution

We are under a Constitution, but the Constitution is what the judges say it is.

Justice Charles Evans Hughs

The most important value of free expression is not free thought for those who agree with us, but freedom for the thought we hate.

A Former Supreme Court Justice

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

Abe Fortas, TINKER, 1969

In our system, state-operated schools may not be enclaves of totalitarianism.

Abe Fortas, TINKER, 1969

It is a constitutional myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases.

Hugo Black, TINKER, 1969

One may be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

Hugo Black, TINKER, 1969

Students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate, and they may not be confined to expression of those sentiments that are officially approved.

Abe Fortas, TINKER, 1969

It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.

Warren Burger, FRASER, 1986

Public education must prepare pupils for citizenship in the Republic. . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation.

Charles Beard as quoted in FRASER, 1986

. . . Constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.

Warren Burger, FRASER, 1986

Freedom of Speech, A First Amendment Right

Kathryn Orler

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Fort Smith, Arkansas

INTRODUCTION

This lesson focuses on freedom of speech, a right guaranteed by the First Amendment of the Bill of Rights. The following activities are designed to help students become aware of the liberty of speech through role playing and a study of a Supreme Court case.

AUDIENCE

Upper elementary school students

TIME TO COMPLETE

Two 30-minute class periods

GOALS

As a result of this lesson, students will:

- demonstrate an understanding of freedom of speech through group role playing
- understand the issues in *Tinker v. Des Moines*

MATERIALS

A copy of the Bill of Rights for each student. *Tinker v. Des Moines* (Handout 1) for each student. Materials to construct a bulletin board entitled: The First Amendment Guarantees

PROCEDURES

1. Distribute a copy of the Bill of Rights to each student.
2. Students will identify what rights the First Amendment protects.
3. Construct a bulletin board with the title: The First Amendment Guarantees. Place the sub-heading, Freedom of Speech, under the title and give examples of freedom of speech.
4. Group activity: State a difficult rule for the class to follow. Example: Students can go to the water fountains only with a hall pass that is signed by the teacher.

   Next, hold an election for class president. Each candidate gives a campaign speech using the new class rule as the campaign platform. The rules are:
   a. They can only agree with the rule.
   b. No debate is allowed.
   c. No suggestion of changing the class rule is allowed.
5. Ask students the following questions:

   Did you feel that the candidates met your need to voice opposition? Why or why not? How did you feel when they were giving their speeches? Listen for: "Angry," "Suppressed," "Frustrated." How would you decide for whom to vote? Would it be necessary to vote? How could this class rule be changed? (Listen for: "Debate," "Compromise," "Discussion.")
6. Case study: Hand out summary of *Tinker v. Des Moines*. Read and discuss how the First Amendment was interpreted to decide the case.
7. Ask students the following questions:

   What is the major conflict in *Tinker v. Des Moines*? What is the legal issue in this case? What constitutional issue is raised in this case? If you were to rule on this case, what would your decision be? Explain your decision.

EVALUATION

1. Evaluate the effect of *Tinker v. Des Moines* upon future hypothetical issues.
2. Research other cases on freedom of speech. Examples: *Yates v. United States*, *Gitlow v. New York*, *Schenck v. United States*.
3. Invite speakers to debate an issue of local concern to illustrate freedom of speech. Have the students critique the debate when it is completed.

TIPS FROM THE TEACHER

- Before beginning the case study, visit a local law library to demonstrate how to research cases. If possible, check out materials that you will need for follow-up study.
- Contact your State Bicentennial Commission and Humanities Councils for a list of speakers and to find media materials that you can use.
- Have students bring from home the newspaper or weekly magazine they subscribe to, and locate examples of freedom of speech.
- Exercise freedom of speech by writing a class letter to the editor about a local issue of concern.

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HANDOUT 1

Tinker v. Des Moines

FACTS:
In 1965 in Des Moines, a group of Quaker students who were active in the American antiwar movement involving Vietnam decided to wear black armbands to school in order to demonstrate mourning for those who died and urge a truce in the fighting.

The school administrators, hearing of the plan, adopted the policy that any student wearing an armband would be suspended from school. Seven students were suspended from school. The students sued the school officials to restrain them from taking disciplinary action. The students claimed that the policy of prohibiting the armbands denied them their constitutional rights.

ISSUE:
Is wearing the armband in protest protected as freedom of expression by the First Amendment to the U.S. Constitution?

DECISION:
Yes. The First Amendment protects symbolic and free speech. The courts stated that there was no evidence that the wearing of armbands interfered with the rights of the other students in the school.

Adapted from *Shaping American Democracy*, Citizenship/Law-Related Programs for the Schools of Maryland, Inc., of the Maryland State Bar Association and the Maryland State Education Department and Law, Youth and Citizenship Program of the New York State Bar Association and the New York State Education Department.

"We the People"

Dorothy Allen

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Muskogee, Oklahoma

INTRODUCTION

This activity is to be a reinforcement of a concluded unit about the American Revolution, the Articles of Confederation, the Constitutional Convention, and the signing of the United States Constitution.

AUDIENCE

Grades four to twelve

TIME TO COMPLETE

Preparation time, two weeks; Play, 30-40 minutes

GOALS

As a result of this lesson, students will:

- develop an appreciation for the work of the Founding Fathers and early colonial leaders who, thorough compromise and debate, drafted a workable set of rules by which to govern the United States.

MATERIALS

Elmer's Glue, Jumbo Cotton Balls, Crepe Paper, needle and thread for making wigs. Suggested costumes: White shirts, dark colored vests, dark slacks, white knee socks, and dark colored shoes.

PROCEDURES

Assign parts, schedule date of presentation, make wigs, conduct daily reading of the play, rehearsel, present the play to invited guests.

EVALUATION

Make arrangements to video tape the presentation of the play. Play the tape for students to review and write essays.

BIBLIOGRAPHY

Sears, Nedra C. *"We the People,"* an original dramatization. (Ms. Sears is Assistant Professor of Education, East Central University, Ada, Oklahoma.)

WE THE PEOPLE
SCENE 1

WHILE MEN ARE WALKING TOWARD THE MEETING, THE CROWD BEGINS TO YELL AT THEM.

Old Lady: Tell me, sirs, when my sons will return to me! Why can't they come home, they are no longer needed?

Farmers: Our crops! What do we do about our crops? We sell them at such low prices that we make no profit. How can we improve our farms, we need money to rebuild the damages done from the fighting. How can we make even enough money to feed our families?

Young Mother: Please, bring my husband home! We need the money to feed our baby. At least pay the poor soldiers the money that is owed them.

NEW YORK vs. NEW JERSEY DEBATING ACROSS THE AISLE.

New York: That's the lowest thing possible. I can't believe ya'll would tax us for that lighthouse after all these years.

New Jersey: Low? You cheap New Yorkers, trying to send foreign goods as your own so you would not have to pay taxes. Well, we'll get our money from the rent you'll pay for the lighthouse on New Jersey land.

THE MEN CONTINUE TO WALK TOWARD THE DESTINATION.

Narration: As we enter the scene we see Congress assembled for a discussion. You are to hear a description of various events that have occurred in America from 1783-1787. This is the period following the great battle at Yorktown where the Americans finally gained freedom from British rule. Since this great victory, the Americans have functioned under a system of government known as the Articles of Confederation. The demonstration you have just witnessed should give you some idea of how the Articles are working.

President Elias Buiandot: As president of Congress, I am totally embarrassed! I can't believe, we, the legislative body of America, can't visit Philadelphia without fear of our own Continental troops.

Member 1: But sir, those soldiers are unpaid and undischarged. Washington's army in New York is in the same condition.

President: Ba! Do you think I don't know that! We're doing the best we can with the power we have, which, as you know, is very little. Without the power to tax we haven't the money to discharge these men, much less finance the country. We can't even pay our war debts.

Member 1: Sir, should we not get about business. We do need to stay on schedule.

President: You're right—what is the report on agriculture?

Member 2: I wish I had good news for you sir, but I don't. Farmers are struggling to repair their land and labor force. As you know, the wounds of war linger. Also, Sir, ever since we lost access to British markets the surplus has piled up and prices have fallen. Farmers are definitely complaining.

President: OK, what's the update on commerce?

Member 3: Though we have new trade routes, they're simply not enough. We are limited by European restrictions and fierce competition.

President: Thank you—what about industry?

Member 4: Sir, there have been problems with the people choosing to buy foreign goods instead of American goods. The problem has partially been solved by taxing these imports. However, we are now seeing trade wars between the states themselves. One strikes out and the other retaliates.

President: Gentlemen, I believe you would all agree that our young nation is in need of changes. Nations all around us both large and small are stepping on us because of our lack of power. Our recommendations to the states are ignored and our citizens will not comply with the needs of our nation. A nation that lacks unity. Something must be done!

THE COFFEE SHOP SCENE.

Narrator: It is a quiet cafe near the outside of town, obscure and unknown like the two delegates themselves will be in history. They are enjoying a pot of tea. The two men are discussing their views and feelings on the revision of the Articles of Confederation. Let's listen in on their conversation.

1st Delegate: I don't know about all this secrecy, do you really think we have the right to completely start again to create a whole new Constitution? Surely they can't be serious. We have started with this form of government and it would be foolish to start again on another. What are they trying to do, form another monarchy by giving all this power to the federal government? Didn't we just finish fighting a war against such a thing?

2nd Delegate: As far as the secrecy goes, do you really think we could get anything accomplished if we made this convention public? Look at all of the different opinions. Something has to be done. The army has no money for arms. How can we even defend ourselves? No country respects a country without leadership. I know we can have a strong federal government and still have our freedom.

1st Delegate: Do you think other countries will respect us if we continue to change our form of government every eight years? We don't know if this new form of government will work any better than the Articles of Confederation. Will the people accept it?

Member 3: Gentlemen, please. We have been chosen by the people to arrive at some sort of solution for the problems that the Articles of Confederation have caused for our country. The people trust us to be wise in our decision and we can't let them down. Think of the men who have died fighting for America's independence. If we fail to govern ourselves in an effective manner their, deaths will have been in vain.

Member 4: Yes, I agree with him. We must realize that we fight not just for our country's future but for the future of democracy as well. Look at France standing at the threshold of fighting for her own independence, only needing our success to start her off.

Man 1: But can we do it? Or are we simply too far gone to be saved? How can we possibly pull ourselves out of this?

Man 3: So much is riding on our success, gentlemen. We have founded this nation under God and with his help we shall prevail.

NARRATION BEFORE MEETING:

Narrator: We are at the State House in Philadelphia. It is Friday, March 25, and enough delegates have arrived so the business—the revising of the Articles of Confederation—can begin. One can sense a certain amount of tension in the air. There is fear that the delegates won't be able to agree on changes. George Washington has been elected to preside over the convention. The delegates present include some of the best talents in America. After a heated debate the delegates decide to go beyond the instructions of the states that sent them to the state house. The convention is about to create a new government. Let me remind you that this convention was very private and secluded from the public. No one was to discuss the proceedings outside the convention hall. Yet, today you will play a very important role. You may very well be the only outsiders to be directly involved in this historic event. So pay close attention. The fate of an entire nation could be in your hands.

NARRATION AFTER MEETING:

Narrator: Finally, a document takes shape. Seventeen weeks have gone by, with dozens of changes. When the time comes to sign the finished product, only forty-two men are still in Philadelphia, and three of these refuse to sign their names. The work of the convention is over. Most of the delegates prepare to return home to champion the Constitution in their respective states. The fate of their efforts now rests with state conventions. When two-thirds of the states vote in favor of the Constitution, it will become the supreme law of the land.

Edmund Randolph (standing): I believe that the best thing to do would not be to merely revise the Articles of Confederation, but to devise a new government with separate legislative, executive, and judicial departments. Congress would have two houses and the states would be represented in each in proportion to their population.

William Patterson (stands): I submit that we revise the Articles of Confederation and not replace them. This new type of government would be more federal than a truly centralized government. I propose that we endorse a one-house legislature of the Articles in which each state is represented equally.

George Washington: Gentlemen, gentlemen, we have to compromise. Every state shall have two representatives in the Senate, and the House shall be based on each state's population. Is this agreeable? (Men nod their consent)

Roger Sherman: I feel that it is wrong to count the slaves as a part of the population.

William Paterson: I believe that they should, they are considered people and property, how can they be left out?

George Washington: Again, gentlemen, let us compromise. The slaves shall be counted but only partially, but they shall also be taxed. Agreed? (Men nod their agreement)

Narration: Upon completion of this Constitution, Congress recommended the plan to the separate states for adoption by convention. In order for the Constitution to go into effect, nine states must now ratify it. Though some states readily accept the plan, the road to adoption is to be a bumpy one. To many, this Constitution is seen as a threat to freedom. Join us now as we enter the state convention of Massachusetts. The majority of those present have resisted this new Constitution, but perhaps they will reconsider. Sam Adams addresses the assembly.

Samuel Adams: Gentlemen, I welcome you to the Massachusetts state convention. As you all know, we are gathered to either accept or reject this new Constitution. At this point, the states of Delaware, Pennsylvania, New Jersey, Georgia and Connecticut have all ratified the document. I now present to you our state governor, John Hancock.

John Hancock: Gentlemen, I am well aware that the majority of us present here represent the antifederalist party. I, too, am a member of this party and want nothing but the best for our state. I must tell you now that I have reconsidered this document and I feel it is what we need. However, at the same time I propose that nine amendments be added to protect the citizens from tyranny. (Cheers from crowd) There must be a guarantee that our freedoms of speech and choice not be violated. Such are our rights. With this request, I vote in favor of the new Constitution. (Cheers)

Narration: Two other states, Maryland and South Carolina, joined Massachusetts in their ratification of the Constitution. However, Rhode Island, who had not even sent a delegate to Philadelphia, refused the document. The ninth state was finally gained when New Hampshire gave their stamp of approval. Nevertheless, it was quickly realized that New York and Virginia had not acted and without them the system would never work. Federalists were faced with such opposers as Patrick Henry in Virginia. However, the fact that the respected George Washington would most likely be President and the fact that the Bill of Rights was proposed both played a part in convincing Virginia to ratify. The battle now shifted to New York. Sit tight and cross your fingers as we peek in on the New York convention. Alexander Hamilton, the persuasive writer of the Federalist Papers, seeks to sway the vote in favor of the Constitution.

Alexander Hamilton: Gentlemen, I pray that you realize that ordinary men are not equipped to govern the country directly. It should be ruled only by men who have the proper abilities and knowledge for managing government. The wishes of the ordinary people must be respected, with this I fully agree. But wisdom must temper the decisions of the majorities. This new Constitution will allow for this balance. (Hamilton walks off stage and a leader comes forth from the group and speaks.)

Leader: I can add nothing to what Alexander has said. I feel that there is truth in his words. We must also consider the fact that New York City is likely to join the union. Therefore, if the state does not ratify, we may lose access to the city and the commerce it provides. I vote approved! (Crowd shouts "approved." Upon hearing this Hamilton runs in and all cheer with satisfaction.)

Alexander Hamilton: We now have a secure union!

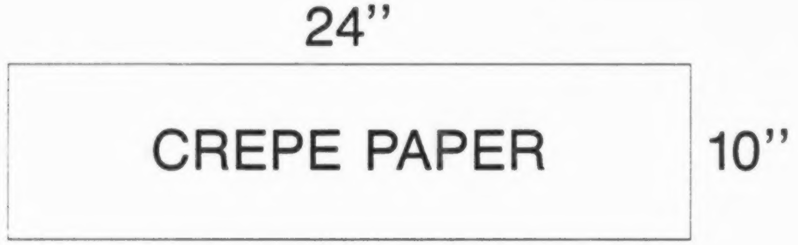
Narration: With the Constitution now in effect, a unanimous vote established George Washington as the first President of the United States. Also to follow was the legal adoption of the Bill of Rights and the joining of North Carolina and Rhode Island to the union. The United States was now truly united.

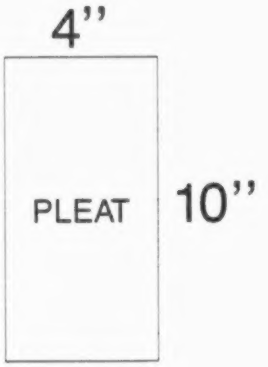
ENTIRE CAST STANDS AND RECITES THE PREAMBLE TO THE CONSTITUTION.

THE END.

WIG PATTERN

Glue 10" sides together. Gather at top using needle and thread. Try on head and trim front around forehead and ears. This should fit like a skull cap. Glue jumbo cotton balls on the entire skull cap. Let dry for a day, try on the wig and let other students shape and trim the cotton balls to arrive at the powdered wig look. Pleat the back piece, glue cotton balls on back piece, attach the tail to the powdered wig and as a final touch add a large black bow to the pony tail.





"Where Does It Say That . . . :" A Game Using the United States Constitution

Robert Blake

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INTRODUCTION

This lesson is designed to be used near the conclusion of a unit on the basic principles of American government. It is intended to check the understanding that the students have regarding the Constitution and more specifically the separation of powers and checks and balance concepts. In this activity, the student will be involved in a competitive game which will force them to distinguish between the responsibilities of each branch of government and judge the accuracy of other students' answers.

AUDIENCE

High School government, law or contemporary issues classes

TIME TO COMPLETE

One or two class periods

GOALS

As a result of this lesson, students will

- better understand the United States Constitution
- appreciate the application of the Constitution in today's world.

MATERIALS

Each student should be given a copy of the United States Constitution or told where they could find one. Also needed is a pack of index cards and a small box.

PROCEDURES

1. As quickly as possible, divide the class into small groups of equal size. Groups of three or four usually work the best.
2. Spread these groups out around the room and direct the students to sit so that they can hear the other members of their group but so that other groups cannot hear their comments. Small, isolated circles work well.
3. Tell the class that this is an activity which will require them to listen closely as the teacher reads aloud a statement. Then they will be given three minutes to search through the United States Constitution for the Article, Section, and Paragraph where this situation is resolved. The amount of time you give the groups will vary depending on their familiarity with the Constitution and their level of skills. Next, distribute to each group five index cards and instruct the students to begin signing their names to their group's cards, so that eventually all group members' names are on each of the groups' five cards.
4. Then read aloud to the entire class one situation from a list of situations which you have prepared in advance of class. The more current the situations, the better. Begin each statement to the class with . . . "Where does it say that. . . ." Some examples might include:
   - . . . because President Reagan has already served two terms, he will not be eligible to run for that office again.
   - . . . the President can call Congress back into special sessions.
   - . . . Congress is to establish inferior courts to the Supreme Court.
   - . . . the President has the power to make treaties with approval from the Senate.
   - . . . the President has the power to appoint members of the Supreme Court.
   - . . . the President shall, from time to time, give to Congress information of the state of the union.
   - . . . only Congress can declare war.
   - . . . judges' salaries cannot be reduced while they are in office.
   - . . . the President is the head of the military.
   - . . . Congress can raise our taxes.
5. Once the group has reached a decision as to where in the U.S. Constitution it refers to this situation, the group's recorder writes the in-

formation (Article, section, and paragraph) on an index card, and gives it to the instructor, who then places it in a box. After all the groups have submitted an answer card, the instructor first pulls a group card from the box and calls on one member of the group to explain to the entire class why their group selected this particular answer. Then, another group card is drawn and one member is selected to either confirm or challenge the initial group's answer. This procedure continues until all groups' cards have been drawn from the box.

6. A new situation is then read to the class; and the same procedure is used by the students, and this continues as time allows (usually five or six situations per class period).

EVALUATION

The true evaluation of this exercise is conducted during the activity as the instructor gauges the accuracy and speed of the answers. Also, for the students' benefit and to help stimulate competition, points may be awarded to aid you in determining a winner by the end of the period.

TIPS FROM TEACHER

This activity should not be used as an introductory activity on the Constitution but rather follow a study of the format found in the Constitution. Also, the first day or time that you play this game, the teacher may find it helpful to use clear-cut issues with easy-to-identify answers. If you choose to play a second day or play it again at a later date, you could raise some situations with no clear-cut conclusions. And of course as students become used to this type of activity, future lessons could have the students generate their own situations. A final consideration would be to change the alloted time as the class becomes used to this type of activity.

BIBLIOGRAPHY

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WE THE PEOPLE: A Collaborative Writing Project on the Constitution

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INTRODUCTION

One thing alone is common to all Americans. Not our language—even though one language predominates. Not religion—we were founded on religious diversity. Not ethnic roots or national origin—people throughout the world have immigrated here. Not our material possessions, our ambitions, drive, energy, or commitment. Not our outlook or beliefs, nor our entertainment or our passions. The Constitution alone is our common heritage.* It endures as a philosophy—constitutionalism rather than a black letter code—a philosophy that can outlive the conditions that gave it birth, a philosophy that can shape the future, a philosophy of participatory government, a government of laws, a government that serves the basic psychological needs of the people. The focus of this project is on effective cooperative learning and collaborative writing in an interdisciplinary approach to explore that philosophy embodied in the Preamble to the Constitution. It is designed to be a culminating activity for a year-long course of study in U.S. History and American Literature which requires students to review historical content, examine the Constitution, and apply basic critical thinking and writing skills. The central theme of the project is the Preamble which embodies the philosophical purposes of our government. Students write definitions based on each of the six governmental functions in the Preamble to illustrate their understanding of those functions and the issues associated with them. The underlying objective of both of the required courses in history and literature is to teach the common heritage of our nation; hence, the focus on the empowerment of the people in the Constitution.

AUDIENCE

This activity is designed for high school juniors in a grade eleven U.S. History/American Literature combined class. It may be adapted to individual classes in U.S. History, government or civics. The interdisciplinary class used for the field test was a regular-level survey class, but the process may be used effectively with accelerated students as well.

TIME TO COMPLETE

Ten to twelve class periods (50-minute periods)

GOALS

As a result of this lesson, students will

- identify their own thinking styles and see how to use those styles most effectively in cooperative learning groups
- examine the complexity of "We the People" through poetry to provide an introductory focus for cooperative study of the Preamble

Each cooperative learning group will

- identify one of the purposes of the government stated in the Preamble and its Constitutional empowerment by:
  a. collectively writing an extended definition of the purpose
  b. citing the articles, sections, clauses in the Constitution dealing with that purpose of government
- choose an historical example of the purpose being carried out and cite two or three court cases or laws which apply to the issue
- produce a three-four page collaborative writing to report its findings
- select one member to present the finished paper to the class. (Other group members should be ready to discuss the paper.)

All six projects will be compiled in a booklet to provide each class member an overview of the Preamble and the Constitution as presented in the collaborative writing projects.

MATERIALS

Unit Orientation (Handout 1)

A U.S. History text with a copy of the Constitution

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*Lieberman, Jethro K., *The Enduring Constitution—A Bicentennial Perspective*, St. Paul: West Publishing Co., 1987, p. 9.

Selected poems to illustrate "We the People" (Handout 2)

Six index cards with clauses from the Preamble printed on them (to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, secure the blessings of liberty)

Folders for each student to bind finished projects. (Title pages, dividers are optional)

General reference book(s) on constitutional court cases. (Use available library resources.)

An Extended Definition (Handout 3), with supportive teacher materials.

The Writing Process (Handout 4)

Thinking skills Inventory (Handout 5)

PROCEDURES

Period One:

Discuss thinking and thinking styles. Administer Thinking Styles Inventory if it is to be used. (The INQ is recommended—available from INQ Educational Materials, Inc., P. O. Box 10213, Berkeley, CA 94709) If desired, groups may be formed based on teacher assessment of student strengths rather than on the inventory. Groups should be composed of three or four students. (A general guide is one with good writing skills, one with good analysis skills, one with weak skills, one with abstract/conceptual skills.)

Period Two:

Introduce the Preamble by having the students turn to a copy of the Constitution; read the Preamble orally to them. Identify the six stated purposes of government and relate them to achieving the basic psychological needs of individuals. (Security, sense of worth, freedom and independence, religion and philosophy of life, a need to care for others, interaction with others, variety and new experience, a measure of conformity.) Tell the students the Constitution is the one common factor in all our diversities that provides for this self-actualization, that empowers us to try to achieve our basic needs. Ask the students what the source of power is in the Preamble. Ask the students to identify who is meant by the phrase *We the People*. List their responses on the board. Next turn the discussion to an exploration of the concept of who are *We the People* by using poetry. Have the students divide a sheet of paper into two columns—label the left-hand column "We" (who has been empowered?); label the right-hand column "Event" (what situation has created the "we"?). Next, read a selection of poems to the students having them list who the "we" is in each poem and what situation or circumstance has made them a part of the "We the People." (Teacher selection of poems should focus on different segments of society. Sample poems are included in Handout 2.)

Period Three:

Assign students to collaborative writing groups either by using the results of the Thinking Styles Inventory (one student from each thinking style if you chose to order these materials) or by teacher assignment. Have each group draw one of the cards for topic assignment. Give students the handout on Extended Definitions (Handout 3) and discuss or review how to write an extended definition and its purpose: clearer communication. Review with students the steps in the writing process. (Use the format endorsed by your school or follow the sample in Handout 4)

Period Four:

Each group should brainstorm and discuss ideas for explaining (extended definition) their clause from the Preamble. The collaboratively written definition should be completed by the end of period four. (It may range from two to three sentences to two or more paragraphs in length.) Students should then collectively identify the places in the Constitution where this purpose of government is empowered. They should cite article, section, clause, and amendments and explain in their own words how it relates to their assigned purpose from the Preamble.

Period Five:

Each group should select the historical example(s) to illustrate their purpose and research the events and data involved to include in their paper. This should include researching two to three court cases or laws related to the historical example they choose.

Periods Six – Nine:

Collaborative research, writing, discussion on the topics. The teacher should act as facilitator during this time to direct students to text sources and to reference materials on court cases or laws, or to point out areas of oversight in student thinking. This process may be condensed into two to three class periods if desired.

Period Ten:

Peer editing and preparation of final copy. During this period the teacher should meet with each group to read for editing suggestions, structural changes, content improvement. One member of the group should be selected to prepare the final copy to submit to the teacher for xeroxing. This should include a title page with the Preamble clause and group member names. These title pages become the dividers between the collaborative writing sections. The teacher would need to assemble the books for distribution to class members before the final presentation, or students could assist in this process.

Periods Eleven – Twelve:

Distribute finished booklets to students. Have one representative from each group read the group's paper to the class as the other group members follow their copies of the text. A discussion and critique of each paper should follow the reading. Focus on *strengths* of each paper: how the phrase was defined, historical events and documentation used to illustrate it, court cases or laws cited to support it. Give one or two suggestions for improvement. This oral critique and discussion is viewed positively by students if they are encouraged to focus on strengths. The teacher can write individual comments and a more detailed criticism on a copy of the paper to be returned to the group if desired.

ALTERNATIVE ACTIVITIES

Students could be asked to illustrate the assigned purpose of government from the Preamble on posters rather than the writing project, or it could be done as an enactment of the historical event they select. Or they could simply show the results of their cooperative research and discussion as an oral presentation to the class. The project could be done at the beginning of the term as an introductory project during the Early National Period, updated during the year as issues arose, and then used as a final review project at the end of the term.

EVALUATION

A. The written paper and critique are the evaluation. All group members receive the same grade.
B. Each group member completes a written evaluation of the project. A single sheet of paper is folded in half horizontally. The top half is a note written to the teacher by the student stating what skills he used in the collaborative project and his best contribution to the project, and making any suggestions for improving the project. The bottom half of the paper is divided equally for the remaining group members. Each co-worker in his group should be given a note identifying three strengths the student evaluator saw in that student in the cooperative effort and one suggestion for improvement for that student. This makes the students accountable for the collaboration process and for assessing what they did in the process.

TIPS FROM THE TEACHER

1. Take the time to sit down with each group during the editing session and make wording, structure, and content suggestions—you'll be pleased with the result. However, a *caution*: resist the temptation to be drawn in too early in the "read this and see how it sounds" trap. The goal is to get the students to collaborate, and they must discuss and collectively resolve areas of disagreement, conflict, or questions. If you act as the "authority" on phrasing or information too early, you will find the group collaboration process breaking down.
2. Make a list for yourself of ideas, historical events, cases, and people under each of the six clauses of the Preamble so you will be able to plant ideas if a group is having trouble getting on track on the brainstorming.
3. Poetry can be selected from any literature anthology. Take advantage of your colleagues in the English department as a resource for this.
4. The poetry can be tape recorded and slides illustrating the focus people of the poems could be used in the introductory activity. If the teacher does not feel comfortable reading the poetry aloud this might be a way to involve an English department colleague or media person in your school.
5. A review of the writing process before the groups begin writing will save a lot of individual questions later. It also helps prepare students—if they do pre-writing activities—to come to the group ready with ideas and information to contribute on the days the actual writing is done. This, again, is an opportunity for interdisciplinary cooperation if you involve one of your colleagues from the English department.
6. The students really like the folders which give their projects a "professional" look. (I used red folders with blue bicentennial emblems on the cover—total cost per student folder was 50¢.) Blue divider pages were used by students to autograph ("sign") their portion of the Constitution project as a memento of the class and the bicentennial celebration. It is a good way to capitalize on student interest and pride in their sense of achievement.

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207

This is a convenient format presenting the gist of major decisions of the U.S. Supreme Court since its establishment. Briefs present the basic points of a case, and for the person who wishes to go beyond that, a listing of leading correlative cases has been appended to each case covered.

Cushman, Robert F., *Cases in Constitutional Law*, 5th edition, Englewood Cliffs, New Jersey, Prentice-Hall: 1979.

The format of this reference divides the cases into two parts: first is the U.S. government structure and relationships, and second are those cases dealing with relationships between the individual and his government.

Lieberman, Jethro K., *The Enduring Constitution—A Bicentennial Perspective*, St. Paul, West Publishing Co.: 1987.

This book provides an insightful overview of the history of the Constitution and examines recent Constitutional issues. A good reference book for the historian in the bicentennial year.

Lockhart, William B., Yale Kasimar, and Jesse H. Choper, *The American Constitution: Cases—Comments—Questions*, 3rd edition, St. Paul: West Publishing Co.: 1970.

This reference book stresses fundamental constitutional issues such as freedom of expression, freedom of religion, state action and racial equality, legislative apportionment, rights of the accused, and judicial review.

Todd, Lewis Paul, and Merle Curti, *Triumph of the American Nation*, Chicago, Harcourt Brace Jovanovich, Publishers: 1986.

This is a comprehensive and current political and social history of the United States. It is a basic survey text for junior level high school students in American History. The text includes an annotated and explicated text of the Declaration of Independence and the Constitution.

Encyclopedia of the American Constitution, 4 volumes, Leonard W. Levy, ed., New York, MacMillan Publishing Company: 1986.

This reference work is easy to use and is arranged alphabetically and cross referenced. The subjects fall into five general categories: doctrinal concepts of Constitutional law, people, judicial decisions, public acts (statutes, treaties, executive orders), and historical periods.

INQ Styles of Thinking, Calif: Educational Materials, Inc., 1980.

This is composed of the Thinking Skills Inventory for students and a manual of administration with explanation of the five thinking styles and extension activities which make it a useful tool beyond the scope of this project.

HANDOUT 1

Preamble

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Each group will take one clause of the Preamble's stated purposes of government based on the will of the people, and do the following:

1. Identify the function of government and its constitutional empowerment.
   - collectively write a definition of the function
   - cite the articles, sections, clauses in the Constitution dealing with that function
2. Choose an example of a figure in history who used this function
   - political figure, citizen, President, group (class action)
   - constitutional issue or power that is involved
   - cite two-three cases which apply to this issue
3. Produce a three- to four-page collaborative writing to report your group findings, which include the above information.
4. Select one member of the group to present the finished paper to the class.
   - final copy should be typed on word processer
   - each group member should be ready to discuss the collaborative writing project
5. All six projects will be compiled into a booklet for each class member.

Schedule Periods: two or three each day

Friday:	Thinking Skills Inventory We the People
Tuesday:	Group assignment/topic assignment Brainstorming for items one and two above Research for item two above using U.S. History text and *Encyclopedia of the Constitution* (see Bibliography)
Wednesday:	Collaborative writing Review the writing process
Thursday:	Collaborative writing Collaborative editing for final copy
Friday:	Presentation of projects Discussion Distribution of final projects

HANDOUT 2

SAMPLE POEMS

LINEAGE

My grandmothers were strong.
They followed plows and bent to toil.
They moved through fields sowing seed.

They touched earth and grain grew.
They were full of sturdiness and singing.
My grandmothers were strong.

My grandmothers are full of memories.
Smelling of soap and onions and wet clay
With veins rolling roughly over quick hands
They have many clean words to say.
My grandmothers were strong.
Why am I not as they?

— Margaret Walker

ONE'S SELF I SING

One's Self I sing, a simple separate person,
Yet under the word Democratic, the word En-Masse.

Of physiology from top to toe I sing,
Not physiognomy alone nor brain alone is worthy for the Muse,
I say the Form complete is worthier far,
The Female equally with the Male I sing.

Of Life immense in passion, pulse, and power,
Cheerful for freest action form'd under the laws divine,
The Modern Man I sing.

— Walt Whitman

RICHARD CORY

Whenever Richard Cory went down town,
We people on the pavement looked at him:
He was a gentleman from sole to crown,
Clean favored, and imperially slim.

And he was always quietly arrayed,
And he was always human when he talked;
But still he fluttered pulses when he said,
'Good-morning,' and he glittered when he walked.

And he was rich—yes, richer than a king —
And admirably schooled in every grace:
In fine, we thought that he was everything
To make us wish that we were in his place.

So on we worked, and waited for the light,
And went without the meat, and cursed the bread;
And Richard Cory, one calm summer night,
Went home and put a bullet through his head.

— Edwin Arlington Robinson

I, TOO

I, too, sing America.
I am the darker brother.
They send me to eat in the kitchen
When company comes.
But I laugh,
And eat well,
And grow strong.

Tomorrow
I'll sit at the table
When company comes
Nobody'll dare
Say to me
"Eat in the Kitchen"
Then.
Besides, they'll see how beautiful I am
and be ashamed, —
I, too, am America.

— Langston Hughes

PSALM OF THOSE WHO GO FORTH BEFORE DAYLIGHT

The policeman buys shoes slow and careful; the teamster buys gloves slow and careful; they take care of their feet and hands; they live on their feet and hands.

The milkman never argues; he works alone and no one speaks to him; the city is asleep when he is on the job; he puts a bottle on six hundred porches and calls it a day's work; he climbs two hundred wooden stairways; two horses are company for him; he never argues.

The rolling-mill men and the sheet-steel men are brothers of cinders; they empty cinders out of their shoes after the day's work; they ask their wives to fix burnt holes in the knees of their trousers; their necks and ears are covered with a smut; they scour their necks and ears; they are brothers of cinders.

— Carl Sandburg

PROLETARIAN PORTRAIT

A big young bareheaded woman
in an apron

Her hair slicked back standing
on the street

One stockinged foot toeing
the sidewalk

Her shoe in her hand. Looking
intently into it

She pulls out the paper insole
to find the nail

That has been hurting her
— William Carlos Williams

CONCORD HYMN SUNG AT THE COMPLETION OF BATTLE MONUMENT, July 4, 1837

By the rude bridge that arched the flood,
Their flag to April's breeze unfurled,
Here once the embattled farmers stood
And fired the shot heard round the world.

The foe long since in silence slept;
Alike the conqueror silent sleeps;
And Time the ruined bridge has swept
Down the dark stream which seaward creeps.

On this green bank, by this soft stream
We set to-day a votive stone;
That memory may their deed redeem,
When, like our sires, our sons are gone.

Spirit, that made those heroes dare
To die, and leave their children free,
Bid Time and Nature gently spare
The shaft we raise to them and thee.
— Ralph Waldo Emerson

HANDOUT 3

AN EXTENDED DEFINITION
Teacher Materials

Careful writers are always aware of the needs of their audience. They want to be sure their readers understand what they are talking about, so they take the time to explain the meaning of any word or phrase or idea that they think their readers might not understand. These explanations, or definitions, may be as short as a phrase of two or three words or as long as several sentences. They may mimic dictionary definitions, be highly personal, or be quite informal. But whatever their length, and however they are expressed, these definitions have a common goal—to explain what something is.

Actually, defining does more than help the reader to understand what the writer is talking about. Defining can also help the writer to clarify his or her own understanding of a word or idea.

There probably are words in your vocabulary—words like friendship, freedom, courage, honesty—that you use all the time, thinking you know what they mean. And you do—more or less. You have a pretty good idea of when to use each word and how to use it. But if you were asked to write a definition for one of these words, you might be surprised at just how hard it is to put into words your understanding of the concept.

There is a kind of definition that can help you to examine closely words and the concepts they represent, to search out relationships between words, and to come to a better understanding of what they mean. It is called the extended definition.

An extended definition is rarely shorter than a few paragraphs and may run much longer. John Stuart Mill's famous extended definition of the word liberty is well over one hundred pages long.

There are several different techniques for developing an extended definition. An extended definition can include a narrative—a brief story—that helps to explain some aspect of the word being defined. Or it may give examples of the thing represented by the word: specific examples which, when listed and considered together, give some insight into the nature of the word by demonstration.

An extended definition may contain the writer's interpretation of the word being defined, as well as the standard definition. It might also include the views and interpretations of other people who hold opposite opinions or who are noted authorities on the subject.

An extended definition may tell you what something is not as well as what it is. Or it may discuss what something is similar to and different from.

Grammar and Composition
Laidlaw Brothers, 1985
Grade 10

TECHNIQUES FOR DEVELOPING AN EXTENDED DEFINITION
Student Handout

1. It can include a narrative—a brief story—to help explain some aspect of the word or phrase.
2. It may give examples of the thing represented by the word or phrase.
3. It may contain the writer's interpretation of the word or phrase.
4. It might include the standard dictionary definition.
5. It might include the views and interpretations of other people (noted authorities, those who oppose it).
6. It may tell you what something is *not*.
7. It may discuss what something is similar to and different from.

REMEMBER: The goal is to clarify meaning

Student Practice Activity for extended definition:

FRIENDSHIP

FREEDOM

COURAGE

HONESTY

COLLABORATIVE WRITING: MAKING IT WORK

WHAT IS COLLABORATIVE WRITING (CW)?

CW is any writing produced jointly by two or more students of varying writing abilities.

WHAT IS THE PURPOSE OF COLLABORATIVE WRITING?

The purpose of CW is to produce writing which is the result of capitalizing on each student's strengths and remediating each student's weaknesses through interaction in the writing group.

WHAT ARE THE ADVANTAGES OF COLLABORATIVE WRITING?

A. Students with poorly developed writing skills benefit from the peer input provided in collaborative writing groups (CWG's). Peer explanations are oftentimes more understandable to the weak student than are teacher explanations.

B. High-achieving students' skills are further developed because they are placed in a position of not only using their skills but also teaching them to students with weaker skills.

C. High-achieving students learn to work more effectively with others as they learn the give-and-take of group decision-making.

D. Class instruction becomes less teacher-centered and more student-centered; students take more responsibility for learning the task.

E. CW nurtures skills needed for students to be more successful not only with group writing activities but also with independently produced writing because through the group experience, they are provided with a successful model of the writing process by the more able students within the group.

F. The teacher is able to give more quality time to students because his/her attention is required by fewer entities.

G. CWG's build social skills; students learn to interact more harmoniously by learning acceptable ways to criticize, to defend ideas, to raise questions, etc.

H. CWG's build in students a sense of belonging to the group, a comradery with others, and a sense of ownership in the writing product.

I. CW is by nature a checks and balances system; students question and/or affirm each other's logic, vocabulary, grammar skills and composition expertise.

WHAT DOES RESEARCH SAY ABOUT COLLABORATIVE WRITING?

Groups produce more and better ideas than do individuals working alone. (Slavin, 1983)

Small heterogeneous groups working together on a learning task increases student achievement, and increases student self-esteem. (Slavin, 1983)

Teaching a fellow student helps tutors learn the material. (Feldman and Allen, 1976)

Cooperative tasks improve student achievement (Feldman and Allen, 1976)

Individuals working together toward a common goal are likely to encourage one another to do whatever helps the groups to be rewarded. (Thomas, 1959)

Students working in groups are more helpful and attentive to one another; they learn to like one another, and they enjoy their work. (Slavin, 1983)

Students cease to depend on the teacher as the only resource and become actively responsible for what they learn. (Aronson, Bridgeman, and Goffner, 1984)

Cooperative learning experiences promote more positive attitudes toward subject area and more liking among students. (Johnson and Johnson, 1983)

Cooperative learning promotes the use of higher reasoning strategies and greater critical thinking competencies. (Johnson and Johnson, 1983)

Group controversy increases comprehension . . . (Smith, Johnson and Johnson, 1981)

Working in small groups encourages active participation in the learning process by all students. (Hawkins, 1976)

Students' work tends to improve when they receive help from peers; peers offering help, furthermore, learn from the students they helped and from the activity of helping itself. (Brufee, 1984)

HANDOUT 4

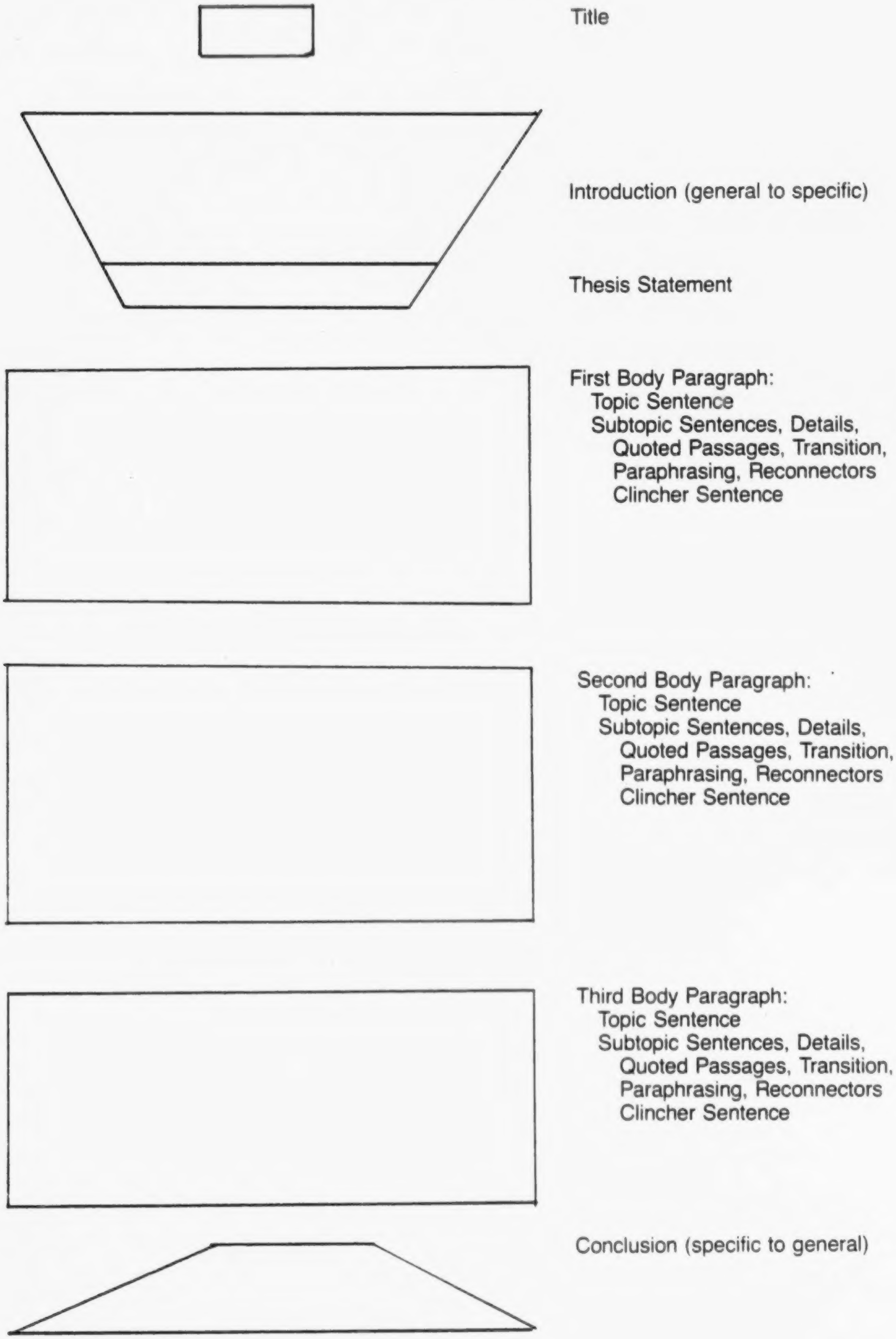
THE WRITING PROCESS

I. Pre-writing/Invention
  A. Purpose is to set yourself up to have ideas
  B. Tactics: Brainstorm, dialogue with fellow students, list random thoughts, looping
  C. Goal: arrive at a central idea—what is my paper about?
  This will lead to the formation of a
  D. Thesis: the statement of "what I want to prove, argue, defend, support, explain."
  E. Note taking—from reading
  F. Make observations from notes—write sentences.
  G. Write observations as paragraphs—use details, examples.

II. Writing a draft/series of drafts
  A. Establishing a *thesis* (see above)
  B. Create an outline
    1. Introduction is a statement (in several sentences) of your thesis.
    2. Body—3 – 4 paragraphs
      a. topic sentence #1 with supporting details
      b. topic sentence #2 with supporting details
      c. topic sentence #3 with supporting details
      d. topic sentence #4 with supporting details
    3. Conclusion—come back to the thesis and reemphasize your point. (more than one sentence)
  C. Decide on organizational pattern (flashback, chronological)
  D. Write—"dump truck" ideas—write all ideas at one uninterrupted sitting. Don't try to polish while you're doing this.

III. Revising/Editing
  A. Read Draft ALOUD—hear ideas, mistakes, flow of writing
  B. Rethink!!
  C. Proofread and correct mechanical, grammatical errors (and usage errors)
  D. Check for unity, coherence, sufficient details, evidence to support generalizations or topic sentences. (There should be no one sentence "paragraphs")
  E. Make final copy and hand it in

Five Paragraph Essay


Title
Introduction (general to specific)
Thesis Statement
First Body Paragraph:
Topic Sentence
Subtopic Sentences, Details, Quoted Passages, Transition, Paraphrasing, Reconnectors
Clincher Sentence
Second Body Paragraph:
Topic Sentence
Subtopic Sentences, Details, Quoted Passages, Transition, Paraphrasing, Reconnectors
Clincher Sentence
Third Body Paragraph:
Topic Sentence
Subtopic Sentences, Details, Quoted Passages, Transition, Paraphrasing, Reconnectors
Clincher Sentence
Conclusion (specific to general)

HANDOUT 5
STYLES OF THINKING

Orientation	I SYNTHESIST	II IDEALIST	III PRAGMATIST	IV ANALYST	V REALIST
Characterized by:	Integrative view Sees likeness in apparent unlikes Seeks conflict and synthesis Interested in change Speculative Data meaningless w/o interpretation	Assimilative or holistic view Broad range of views welcomed Seeks ideal solutions Interested in values Receptive Data and theory of equal value	Eclectic view "Whatever works" Seeks shortest route to payoff Interested in innovation Adaptive Any data or theory that gets us there	Formal logic and deduction Seeks "one best way" Seeks models and formulas Interested in "scientific" solutions Prescriptive Theory and method over data	Empirical view and induction Relies on "facts" and expert opinion Seeks solutions that meet current needs Interested in concrete results Corrective Data over theory
Strengths:	Focus on underlying assumptions Points out abstract conceptual aspects Good at preventing over-agreement Best in controversial, conflict-laden situations Provides debate and creativity	Focus on process, relationships Points out values and aspirations Good at articulating goals Best in unstructured, value-laden situations Provides broad view, goals and standards	Focus on payoff Points out tactics and strategies Good at identifying impacts Best in complex, incremental situations Provides experiment and innovation	Focus on method and plan Points out data and details Good at model-building and planning Best in structured, calculable situations Provides stability and structure	Focus on facts and results Points out realities and resources Good at simplifying "cutting through" Best in well-defined objective situations Provides drive and momentum
Liabilities:	May screen out agreement May seek conflict unnecessarily May try too hard for change and newness May theorize excessively Can appear uncommmitted	May screen out "hard" data May delay from too many choices May try too hard for "perfect" solutions May overlook details Can appear overly sentimental	May screen out long-range aspects May rush too quickly to payoff May try too hard for expediency May rely too much on what "sells" Can appear over-compromising	May screen out values and subjectives May over-plan, over-analyze May try too hard for predictability May be inflexible, overly cautious Can appear tunnel-visioned	May screen out disagreement May rush to over-simplified solutions May try too hard for consensus and immediate response May over-emphasize perceived "facts" Can appear too results-oriented
Behavioral cues					
Apt to appear	Challenging, skeptical, amused, or may appear tuned out, but alert when disagrees.	Attentive, receptive; often supportive smile, head nodding, much verbal feedback.	Open, sociable, often a good deal of humor, interplay, quick to agree.	Cool, studious, often hard to read, may be a lack of feedback, as if hearing you out.	Direct, forceful, agreement and disagreement often quickly expressed nonverbally.
Apt to say:	"On the other hand . . ." "No, that's not necessarily so . . ."	"It seems to me . . ." "Don't you think that . . . ?"	"I'll buy that . . ." "That's sure one way to go . . ."	"It stands to reason . . ." "If you look at it logically . . ."	"It's obvious to me . . ." "Everybody knows that . . ."
Apt to express:	Concepts, opposite points of view; speculates, may identify absurdities.	Feelings, ideas about values, what's good for people, concerns about goals.	Non-complex ideas, may tell brief personal anecdotes to explain ideas.	General rules, describes things systematically, offers substantiating data.	Opinions, describes factually, may offer short, pointed anecdotes.
Tone:	Sardonic, probing, skeptical, may sound argumentative.	Inquiring, hopeful; may sound tentative or disappointed and resentful.	Enthusiastic, agreeable; may sound insincere.	Dry, disciplined, careful, may sound set, stubborn.	Forthright, positive, may sound dogmatic or domineering.
Enjoys:	Speculative, philosophical, intellectual argument.	Feeling level discussions about people and their problems.	Brainstorming around tactical issues, lively give-and-take.	Structured, rational examination of substantive issues.	Short, direct, factual discussions of immediate matters.
Apt to use:	Parenthetical expressions, qualifying adjectives and phrases.	Indirect questions, aids to gain agreement.	Case examples, illustrations, popular opinions.	Long, discursive, well-formulated sentences.	Direct, pithy, descriptive statements.
Dislikes:	Talk that seems simplistic, superficially polite, fact-centered, repetitive, "mundane."	Talk that seems too data-bound, factual, "dehumanizing"; and openly conflictual argument unless about issues of caring or integrity.	Talk that seems dry, dull, humorless; or too conceptual, philosophical, analytical, "nit-picking."	Talk that seems irrational, aimless, or too speculative, "far-out", and irrelevant humor.	Talk that seems too theoretical, sentimental, subjective, impractical, "long-winded."
Under stress:	Pokes fun	Looks hurt.	Looks bored	Withdraws	Gets agitated

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PICK: Patents, Inventions, The Constitution and Kids

Karen Diercks

Ematai Elementary School
Bellevue, Washington

INTRODUCTION

PICK (Patents, Inventions, the Constitution, and Kids) lessons focus on the relationship between protection provided by the Constitution and inventions. The lessons foster skill development across the curriculum. Elements of the lesson integrate history, language arts, reading, and design. Students will use creativity and higher levels of thinking such as analysis, synthesis, and evaluation. They will work individually and in small groups. Activities include note taking, inventing, illustrating, letter writing, editing, evaluating, reading and discussing. Students will invent a product then apply for and receive a patent. PICK lessons lead naturally into further lessons about inventions and technology.

a pick: a very early invention
to pick: select an invention
pickover or pick apart: examine for patent
pick out: recognize or distinguish attributes of an invention
pick up: what business may do with a new invention
pick and choose: decide which invention is useful to categorize inventions
pick your brain: pluck an idea from your head for a new invention
Am I being too picayune????

The word *patent* meaning to reveal, comes from the Latin patere (to be open). Inventors reveal the details of their inventions to the patent office. If the invention is new, a patent is granted.

During colonial times patents for inventions were issued by various colonial governments. The inconvenience of granting patents by individual states was apparent. During the Constitutional Convention both James Madison of Virginia and Charles Pickney of South Carolina submitted proposals that the Congress have the power to grant patents and secure copyrights. They were adopted unanimously and became Article I section 8 of the Constitution stating that Congress shall have the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Anyone may apply to the U.S. Patent Office for a patent which, if granted, will be protected for 17 years. To be eligible for a patent, an invention must meet four legal requirements: (1) the inventor must describe how to make it in writing, and include detailed drawings if appropriate, (2) there must be an oath by the inventor that the invention is (3) new and (4) unobvious (sufficiently different from earlier inventions that it does not appear obvious to a person of ordinary skill in that field). This is accompanied by a filing fee and submitted to the Commissioner of Patents, Washington, D.C. 20231.

Patent numbers which must appear on the invention, show that the inventor: (1) applied to the U.S. Patent and Trademark Office (2) learned that no one else had ever invented something quite like this (3) received a numbered, dated document saying so.

AUDIENCE

Upper elementary school students

TIME TO COMPLETE

Approximately five days or class periods

GOALS

As a result of this lesson, students will

- know history of patents and the Constitution
- value the protection of the patent
- be able to create inventions
- apply for and issue patents related to those inventions.

MATERIALS

Paper and pencils for notes, small cardboard milk cartons, "odds and ends" such as paper scraps, buttons, paper clips, paper and pens for letters, 8x8 tag board for drawing invention, patent certificates, butcher paper for mounting drawings, Patent Quiz (Handout 1).

PROCEDURES

1. Lesson One: *PICK History.* Teacher provides information and leads discussion on need for patents and history of patents with emphasis on wording in the Constitution. Students will discuss, ask questions and take notes.
2. Lesson Two: *Milk Carton Derby.* Students will design something useful from a milk carton. It is necessary to gather at least two cartons per student. School lunches are a good source. Students will take a common resource (milk carton) that would normally be thrown away (wasted) ad turn it into a useful product (invention).
3. Lesson Three: *Patent Application.* Students will write an application for a patent in correct business letter form to the Room Commission of Patents and Trademarks. The letter must contain in paragraph form: (1) detailed description, (2) belief that it is new, (3) belief that invention is useful and why, (4) reason it is unobvious. The applicant must declare that he/she is the original inventor of what he/she seeks to patent. A detailed drawing must be attached.
4. Lesson Four: *Patent Examination and Issue.* Students will work in small groups to examine letters of application to determine if patents should be granted based on specific criteria: (1) applicant describes invention in specific detail, (2) there is not another one exactly like it, (3) it is new and useful, (4) the applicant has actually invented it. If the application passes examination, a patent certificate will be issued. If not, application may be edited and resubmitted.
5. Lesson Five: *PICK "Trial and Hanging."* Evaluation quiz is given and corrected. Wall hanging of detailed drawings is made.
6. Further PICK activities for kids:

   Write an advertisement for your invention, videotape a commercial for your invention, make a class newspaper of inventions, create a story about you and your invention, demonstrate and describe your invention to the class, graph class inventions in categories, make a slide show of your inventions, find and record patent numbers on inventions around home and school.

EVALUATION

See following PICK Quiz (Handout 1)

TIPS FROM THE TEACHER

Follow-up lessons might be developed around child labor and protective laws, (Kids and the Constitution). With the advent of the Industrial Revolution patents were issued that completely changed the work force. Children were pressed into service for long hours at tedious jobs. In order to protect children under 18 from this labor, a child labor amendment was submitted to the States during the 1st session of the 68th Congress in June 1924 but was not ratified by three-fourths of the States. The Proposed Article 13 Section 1 read "The Congress shall have power to limit, regulate, and prohibit the labor of persons under 18 years of age." Although not an amendment to the Constitution, child labor rights are protected by the Child Labor Law signed by President Woodrow Wilson on September 1, 1916.

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HANDOUT 1

Name ______________________________________

Date ____________________

PATENTS, INVENTIONS, THE CONSTITUTION, AND KIDS *QUIZ*

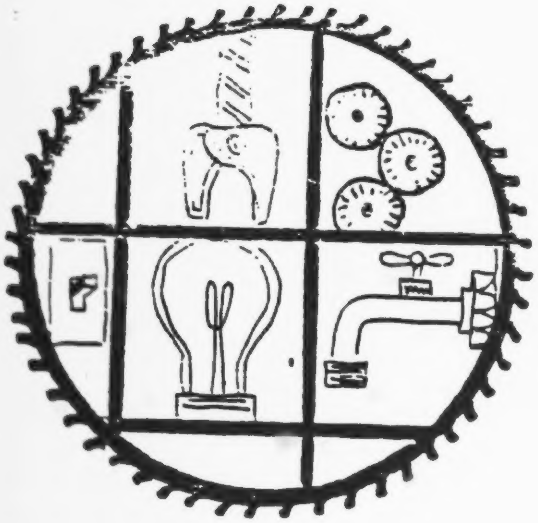
1. What section of the U.S. Constitution gives Congress the power to grant patents and copyrights?

2. When an invention is granted a patent, how many years is it protected?

3. What must be included in each patent application?

4. What kind of inventions do you think will be patented in the future? (Use your imagination and think of needs.)

5. Use the following words in a paragraph to describe the patent process: Constitution, applicant, commission, invention, patent, examiner, issue, unobvious filing fee, declaration.



Patent No. ______

Room ___ Official Patent

granted to

____

this ___ day of ____ 198_

for

____

____

____

____

____

____

____

Patent Examiners

Room ____

Office of Patents

________ School

The United States Constitution Is Only As Good As "We the People" Make It

Barbara Firestone

McCollom Elementary School
Wichita, Kansas

INTRODUCTION

The United States Constitution represents the ideas of 55 delegates who attended the Constitutional Convention in Philadelphia in 1787. The Constitution is an unprecedented document because of its flexibility, which has helped it last 200 years. The focus of this lesson is on the flexibility of the United States Constitution. Today, as in the past, compromise is an important part of the democratic process. Throughout American history, there have been events and circumstances which were not envisioned in 1787. Thomas Jefferson, speaking on the Virginia Constitution, said that every generation should examine a constitution to see whether revisions might be necessary. In this respect, the United States Constitution is in a continual state of self-renewal. It is the obligation of "we the people" as part of our heritage and legacy to accept the responsibility to improve the Constitution.

AUDIENCE

This lesson is for elementary children, grades four through six. It may be adapted for grades seven through twelve, including gifted classrooms.

TIME TO COMPLETE

Three to five days

GOALS

As a result of this lesson, students will:

- be able to identify ways in which flexibility might be utilized to accomplish a common goal
- discuss how flexibility and compromise were necessary in the writing of the United States Constitution
- explain how the cases of *Plessy v. Ferguson* and *Brown v. Topeka Board of Education* demonstrate the Constitution's flexibility.

MATERIALS

Straws
Straight pins
Scissors
Copies of the cases: *Plessy v. Ferguson* and *Brown v. Topeka Board of Education* (See Handouts 1 and 2 for summaries)
Focus questions

PROCEDURES

1. Explain to students that they will be involved in an activity about the United States Constitution that will help them understand more about how this document works.
2. Tell the students they will be divided into groups of three to five students and that they will be given materials for the purpose of building a structure. Explain that each group should plan and construct a structure which can stand by itself.
3. Allow one class period for students to work on their structures.
4. Tell the students that these group structures represent the ideas of the members of each group. Discuss the strengths and weaknesses of the group structures.
5. Select one member of each group and ask them to cooperate to join all of the structures into one, which can measure no larger than three feet by two feet. Discuss the strengths and weaknesses of the new structures. Suggest to the students how their structure is like the steel framework upon which the electrical work, plumbing and walls of a building hang together.
6. Give the students an opportunity to make changes in the group structure. Explain to the children that there is a similarity between their structure and the U.S. Constitution. The United States Constitution is made up of many ideas of the 55 delegates who attended the Constitutional Convention in 1787.

7. Introduce and discuss the words: flexibility, stalemate, compromise, amendment, constitutional, ratification and unprecedented. Distribute copies of the Constitution to groups and have students examine the framework. The Preamble outlines the purposes of the government; Article I provides for a law-making body; Article II provides for a president and the powers of the office; Article III establishes the judicial branch of government; Article IV covers state powers and the limits on those powers; Article V describes the method for amending the Constitution; Article VI makes the constitution the supreme law of the land; and Article VII explains the ratification method of the Constitution. Within this framework the laws are written, our government interacts with other nations, court cases are settled and the rights of citizens are protected.
8. Stress that the framework of the Constitution makes it flexible because the framers left the details so that future generations could re-write laws and change judicial decisions. To alter the structure, there is the amending process. Students may want to examine the types of structural changes that have been made through this process. Many of these changes deal with the rights of citizens. (Examine Thirteenth, Nineteenth, Twenty-second, and Twenty-sixth amendments.)
9. Another way that the Constitution is made flexible is through the Supreme Court which has power to review laws written by the Congress and to review the actions of the President. Have students examine the two court cases, *Plessy v. Ferguson and Brown v. Topeka Board of Education*. Discuss with students how this process makes the Constitution flexible.
10. Questions to discuss with the students:
    1. Describe the strengths and weaknesses of individual group structures.
    2. What advantages came from using the ideas of everyone in the group? Were there disadvantages? If so, explain what these were.
    3. When all of the structures were made into one large group structure, why was it important to include every group's contribution?
    4. What are the strengths and weaknesses of the large group structure?
    5. Did every group participate equally? Did every group get what they wanted? Why or why not?
    6. What process is involved in making a large group structure?
    7. What responsibilities did individual groups have toward the success of the total group structure?
    8. Explain the advantages of flexibility and compromise.
    9. How do you think the suggestions of the delegates to the convention of 1787 became the Constitution?
    10. Why was the United States Constitution incomplete and why has it been necessary to amend it?

EVALUATION

1. Discussion

   Have the students list ways they use compromise and flexibility to accomplish a common goal in a classroom. (Examples: playing games, during recess, helping the teacher with classroom duties, homework, and field-trips.)

   Ask the students to suggest times when there has been a stalemate and compromise has been necessary. What purpose did the compromise serve? Ask the students to suggest ways they think the writers of the United States Constitution had to compromise.
2. Observation
3. Have students use "I learned . . ." statements.

TIPS FROM THE TEACHER

Select groups ahead of time and have the materials ready. (50-60 straws per group, a package of pins for each group, and scissors). Stress that the structure should stand alone. Discourage students from building identifiable structures such as bridges

Fourth-grade teachers might need to explain briefly the concepts of government and the United States Constitution as younger students may be unfamiliar with these concepts

Read the book, *S.O.R. LOSERS*, and lead students in a discussion. Encourage them to point out things in the story that may be unconstitutional.

Have the students read *Huckleberry Finn* and ask them to keep a journal of things they feel people may object to in this book and a list of positive things found in the book. When *Huckleberry Finn* has been read, ask students to share their lists and to read the book, *The Day They Came to Arrest the Book*. Have a mock trial on the book, *Huckleberry Finn*.

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HANDOUT 1

SEPARATE BUT EQUAL
PLESSY V. FERGUSON (1896)

Homer Plessy in June of 1892 went to the railroad station in New Orleans. Mr. Plessy bought a first-class ticket and walked toward the waiting train. Signs were posted on the railroad cars. Some said "for coloreds only." Others said "for whites only." No persons were allowed to sit in seats or cars marked for those of another race.

Plessy boarded a car marked "for whites only" and took an empty seat. Mr. Plessy was removed from the "whites only" car by force, arrested and jailed. He was accused of breaking a segregation law.

In court Mr. Plessy said that this law denied him his rights. The lawyers for Louisiana said that state laws could separate the races, as long as equal facilities were provided for each race.

The Supreme Court did not agree with Plessy. They ruled that Louisiana's "Jim Crow" law of 1890 was *constitutional*.

HANDOUT 2

BROWN V. TOPEKA BOARD OF EDUCATION

(1954)

On school mornings, Linda Brown would wake up early. She had to get up earlier than most of the kids in her neighborhood. She was black, and she lived in Topeka, Kansas. A Kansas law allowed segregated schools. This law allowed those who ran Topeka's schools to have separate schools for black children and white children.

There was a grade school just five blocks from Linda's house. But that school was for white children only. Linda had to take a bus that would carry her 21 blocks to the school for black kids. So she had to get up early.

Linda's parents were angry about this situation. They took their case to a federal court in Topeka. They said that Linda's school was not as good as the white school nearer their neighborhood. The black school's building was old. The classrooms were crowded. And there weren't enough teachers.

Mr. and Mrs. Brown said that Linda had been denied the "equal protection of the laws" promised by the Fourteenth Amendment.

But Mr. and Mrs. Brown claimed even more. They said that Linda's school could never be equal as long as it was separate. They argued that segregated schools were harmful to black children. Such schools, they argued, seemed to say that blacks weren't good enough to go to school with whites. The only way to prevent this harm was to put an end to all segregated schools.

Linda's parents asked the United States Supreme Court to look into their case. The court decided that the Browns were right and that schools everywhere in the United States should no longer be segregated.

A Constitutional Scavenger Hunt

Kathryn Griffin

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INTRODUCTION

This is a game designed to introduce or review the Constitution. The purpose is to provide a more exciting way for the students to read the Constitution. When this material is presented in a game format, the students become involved in the competition and enjoy searching for the answers. Work becomes play.

AUDIENCE

Grades seven through twelve

TIME TO COMPLETE

This activity will take at least two class periods.

GOALS

As a result of this lesson, students will:

- become familiar with the Constitution by using this game as an introductory activity
- review the Constitution by using the game as a culminating activity
- make reading the Constitution fun on a competitive basis in a game situation

MATERIALS

One set of questions per person (Handout 1)

One blank answer sheet per team (Handout 2)

One copy of the Constitution per student

One teacher answer key (Handout 3)

PROCEDURES

- Go over the Preamble as an introduction
- Divide the students into teams of three to five people
- Hand out the questions to the students
- Hand out the blank answer sheet to each team
- Read through the directions
- Tell the students the activity will take fifty minutes
- Correct the answer sheets in class
- Award prizes to the team with the most correct answers

HANDOUT 1

A CONSTITUTIONAL SCAVENGER HUNT

1. The President may pardon people of offenses committed against the United States.
2. American citizens have freedom of religion, speech, press, assembly, and petition.
3. The presiding officer of the House is the Speaker of the House.
4. Congress has complete control over the territories.
5. Congress has the power to declare war.
6. The Constitution created one Supreme Court and gave Congress the right to establish inferior courts.
7. Congress cannot grant titles of nobility.
8. The right to vote cannot be denied because of sex.
9. The salary of the President cannot be changed during his period in office.
10. The practice of slavery can never be legal in the United States.
11. A representative must be a citizen for seven years, twenty-five years old, and live in the state.
12. Congress has the power to establish post offices.
13. The President can call special sessions of Congress.
14. All state and federal officials are under oath to support the Constitution.
15. Federal courts have original jurisdiction over all cases affecting ambassadors, public ministers, and consuls.
16. The President is limited to two terms in office.
17. All revenue bills must originate in the House of Representatives.
18. The Vice President is the presiding officer of the Senate.
19. Treason is levying war against the United States, adhering to our enemies, or giving them aid and comfort.
20. No state can make a treaty with a foreign country.
21. The Constitution was ratified by conventions in nine states.
22. The President promises to preserve, protect, and defend the Constitution.
23. The governor has the authority to call an election to fill a vacancy in the House of Representatives.
24. Unreasonable search and seizures are forbidden.
25. Each state has as many presidential electors as the number of senators and representatives.
26. Expulsion can be used to remove a member of either house of Congress for an infraction of the rules.
27. Congress may propose amendments to the Constitution by a two-thirds vote of both houses.
28. The Constitution is the highest or supreme law in the United States.
29. A person cannot be tried twice for the same crime and does not have to testify against himself.
30. Congressmen are paid a salary out of the Treasury of the United States.
31. Judicial proceedings in each state are given full faith and credit in every other state.
32. A term in the Senate is six years for each senator.
33. The President must be thirty-five years old to meet eligibility requirements.
34. Race, color, or previous servitude cannot be used to deny someone the right to vote.
35. Congress has the power to establish a uniform rule of naturalization.
36. The President has the power to make treaties with approval from the Senate.
37. All bills must be passed by the House and the Senate, and presented to the President.
38. The President and the Vice President are subject to removal from office by the impeachment process if convicted of treason, bribery, or other crimes and misdemeanors.
39. Congress has the power to levy and collect an income tax.
40. Amendments may be ratified by three-fourths of the legislatures of the states.
41. A person convicted by the impeachment process can still be tried in a regular court if he or she violated a law of the United States.
42. The President and Vice President are elected to a four-year term.
43. The President has the power to appoint members of the Supreme Court with Senate approval.
44. The governor can request that a person be returned to the state where a crime was committed.
45. A person has a right to a speedy and public trial by an impartial jury of the state.
46. Congress has the power to borrow money on the credit of the United States.
47. Congress has the power to make all laws which are necessary and proper to execute all other powers. (Elastic Clause)
48. Any person accused of a crime (other than by impeachment) shall be guaranteed a trial by jury.
49. Powers that are not granted to the national government are reserved to the states or the people.
50. The President shall be Commander in Chief of our armed forces.

HANDOUT 2

ANSWER SHEET: A CONSTITUTIONAL SCAVENGER HUNT

Article No. Section No. Clause No. Amendment No.

1. ______________________________
2. ______________________________
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46. ____________________

47. ____________________

48. ____________________

49. ____________________

50. ____________________

HANDOUT 3

ANSWER KEY

1. Article II, Section 2, Clause 1
2. Amendment 1
3. Article I, Section 2, Clause 5
4. Article IV, Section 3, Clause 2
5. Article I, Section 8, Clause 11
6. Article III, Section 1
7. Article I, Section 9, Clause 8
8. Amendment 19
9. Article II, Section 1, Clause 6
10. Amendment 13
11. Article I, Section 2, Clause 2
12. Article I, Section 8, Clause 7
13. Article II, Section 3, Clause 1
14. Article VI, Clause 3
15. Article III, Section 2, Clause 2
16. Amendment 22
17. Article I, Section 7, Clause 1
18. Article I, Section 3, Clause 4
19. Article III, Section 3, Clause 1
20. Article I, Section 10, Clause 1
21. Article VII
22. Article II, Section 1, Clause 7
23. Article I, Section 2, Clause 4
24. Amendment 4
25. Article II, Section 1, Clause 2
26. Article I, Section 5, Clause 2
27. Article V
28. Article VI, Clause 2
29. Amendment 5
30. Article I, Section 6, Clause 1
31. Article IV, Section 1
32. Article I, Section 3, Clause 1
33. Article II, Section 1, Clause 4
34. Amendment 15
35. Article I, Section 8, Clause 4
36. Article II, Section 2, Clause 2
37. Article I, Section 7, Clause 2
38. Article II, Section 4
39. Amendment 16
40. Article V
41. Article I, Section 3, Clause 7
42. Article II, Section 1, Clause 1
43. Article II, Section 2, Clause 2
44. Article IV, Section 2, Clause 2
45. Amendment 6
46. Article I, Section 8, Clause 2
47. Article I, Section 8, Clause 18
48. Article III, Section 2, Clause 3
49. Amendment 10
50. Article II, Section 2, Clause 1

An Eighteenth-Century Constitutional Party

Angela Hamilton

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INTRODUCTION

This lesson instructs the teacher how to give a party to celebrate the writing of the Constitution of the United States of America. The party will occur at the conclusion of a study of the Constitution. Sensing a need to revitalize an appreciation for the principles underlying the United States Constitution, and being cognizant of the momentous occasion which is upon us, this activity capitalizes upon the circumstances for promoting our constitutional form of government.

AUDIENCE

These suggestions can be incorporated at all grade levels.

TIME TO COMPLETE

The amount of time to complete the activity is 50 minutes. The entire project might conceivably encompass a six-week period if these suggestions are combined with other instructional materials.

GOALS

As a result of this lesson, students will:

- develop a lasting appreciation for the Constitution and for the Founding Fathers
- become more aware of the Founding Fathers as real individuals
- identify pertinent aspects of colonial life
- work with others through cooperative efforts, after an introduction to the art of compromise
- demonstrate a sense of pride and patriotism

MATERIALS

Christmas tree, raisins, Christmas tree stand, violet mints, Christmas tree skirt, cake with gold leaves, handmade tree ornaments, hot cross buns, (26 amendments) pumpkin bread, handmade mobiles, punch, (preamble) table and cloth, (7 articles) greenery and berries, handmade ship of state cloth backdrop, (to top tree) magic markers, candle holders, spray paint, candles, tables and chairs for cards, matches, deck of cards, punch bowl and ladle, chairs for participants serving dishes, musical instruments, plates, napkins, cups, string, eighteenth century foods, popcorn, garlands, salted almonds (tree), cheese (room), ham

PROCEDURES

1. Divide the class into five groups to research the lifestyle of late eighteenth-century America. Wherever possible, students will select the area they wish to research. The findings of these specific groups of food, clothing, music, traditions, and games should be shared with the class as a whole. Written reports will be given to the teacher for grading.
2. Designate groups to be responsible for planning, arranging, and securing the necessities for a Constitutional Christmas party. This is the final activity for a study of the United States Constitution. Assignments will be made by groups. For example:
   Food: determining food for each student to bring
   Clothing: secure period costumes for class members
   Music: schedule the playing of instruments
   Tradition: design invitations and decorate tree and room as close to the period as possible
   Games: teach classmates prior to party

Invitations might be delivered to school administrators, media specialists, band and choral directors, other selected faculty, local news media, city officials, and each class member. Students will select and impersonate specific historical people from the Constitutional Convention. All class members will be dressed in period costumes which might be borrowed from the local community theater or a university drama department.

Decorations will be handmade by the students with additional decorations being provided by a local florist. Decorations will be reflective of the season and should follow a constitutional theme. For example, decorations for the Christmas tree might be ornaments made about the Preamble, the seven Articles of the Constitution, the Bill of Rights and the other Amendments.

The theme of "We the People Celebrate" will be obvious through the cover of the invitation and a bulletin board display.

Games, dancing, singing, and the reading of an original poem by the teacher, "A Visit From Uncle Sam," will highlight the merriment along with the partaking of traditional foods.

EVALUATION

- student written reports
- student oral presentations
- teacher and student prepared test

TIPS FROM THE TEACHER

This is a project which, by its very nature, necessitates involvement of parents, endorsement by the school administration, cooperation from members of the faculty, as well as assistance from helpful community members.

A local photographer may be hired. The school district might award certificates of appreciation to supportive citizens and organizations.

An alternative arrangement may be made with a local organization, such as the Woman's Club, for students to perform for the community on a Saturday, an afternoon, or an evening, thus broadening the number of those able to view a unique approach to popularizing knowledge of the Constitutional Convention.

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HANDOUT 1
A VISIT FROM UNCLE SAM

'Twas the Friday before Monday,
When all through the schoolhouse
Not a creature was still, not even a louse;
The books were thrown on the desks in disarray,
In hopes that 2:40 would come without delay;
The students were slumped all smug in their desks,
While visions of the weekend danced through their heads;
And teacher in her glory, and we in a trap,
Had just settled our brains for a short winter nap—
When out in the school yard there arose such a clatter,
We sprang from our desks to see what was the matter.
Away to the windows we flew in a dash,
Threw open the shades and windows in a flash.
The sun, on the wetness of the new-fallen rain,
Gave a glitter to the midday terrain;
When what to our groping eyes should occur
But a living document and seven mighty articles,
With a preamble so thorough it was destined to stay,
We knew right away it was the Constitution of the U.S.A.
More meaningful than life its message came,
And we whistled, and shouted, and called the articles by name:
"Now, Legislative! Now, Executive! Now, Judicial! And, Relation of States!
On Amendments! On, National Supremacy! And, Ratification!
To the Bill of Rights, to the twenty-sixth amendment which tell!
Now learn me; learn me; learn me well!
As brown leaves whirl on an autumn day,
When they meet with the wind and fly away,
So, up to the school roof they flew,
With a ship full of concepts and Uncle Sam too.
And then in a zip, we hard on the roof
The actions and results of thoughts aloof.
As we drew in our heads and were turning around,
In the doorway, Uncle Sam came with a bound.
He was dressed in red, white, and blue, And his clothes were fresh as morning dew;
A bundle of ideals showed on his face,
And he looked like a salesman just opening his case.
His blue eyes how they shown! His face how bright!
His features were firm, his countenance just right;
His white teeth glistened with a glow,
And the beard on his chin was as soft as snow.
The hat on his head sat straight and tall,
And we knew he had something for all. He had a broad message and food for thought
That shook our minds when he told how Americans had fought.
He was lean and trim, a stately gentleman—
And we rejoiced when we heard him, one by one.
A smile on his lips and a kind nod of his head
Soon told us we had nothing to dread.
He spoke briefly and surely so as not to be late,
And filled our "noggins" with matters of state,
And putting his finger to his head,
And giving a farewell, out the doorway he sped.
He sprang to the ship of state, to his crew he gave a shout,
And away they all raced like a rocket with clout;
But I heard him proclaim as he flew away,
"Democracy to all, and to all a good day!"

Angela Blackston Hamilton

Insure WHOSE Domestic Tranquility?

Marjorie Hollowell

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INTRODUCTION

"Insure WHOSE Domestic Tranquility?" is a role-play activity depicting the personal experiences of different groups during Japanese internment. It is organized in a flexible format which can be adapted to a variety of values-oriented objectives. It is designed to explore the human effect of discriminatory action on an entire class of people. It may be used with topics such as Japanese-American internment and discrimination against Vietnamese immigrants or AIDS victims.

AUDIENCE

It may be used in grades seven through twelve social studies, English or humanities classes. In addition, there are suggested projects which might relate to economics, sociology, art, drama, journalism or technical drawing classes.

TIME TO COMPLETE

This lesson can be completed in one class period, or extended to a week using different writing and value-oriented assignments.

GOALS

As a result of this lesson, students will:

- examine the personal, emotional, and social impact of exclusionary actions
- develop awareness of the role of the American public as "whistle-blower" when rights are violated with governmental approval
- critically analyze the motivations of legislators and judges and their responsibilities to the American public

MATERIALS

Copies of individual roles for students

PROCEDURES

1. After assigning roles, encourage students to assume the mindsets of the persons they will portray.
   - Assign roles for each person in the activity. Allow time (overnight or in class) for students to prepare roles.
   - A group of students presents the role play to the class as a panel—in the order they are written here. Remainder of the class functions as media in a "Meet the Press" mode. The "press" questions panel members.
   - Alternatively, divide the class into groups of nine students. Assign a role to each student. Allow time for students to prepare roles. Allow the class to role play in groups, where each student must participate.
2. BE SURE TO DEBRIEF USING QUESTIONS FOR DISCUSSION.

ROLE 1

You are a white California farmer, a member of the "Sons and Daughters of the Golden West." Your average production per acre is less than 30% of the production of a typical Japanese-American farmer. You see his overwhelming success, accelerated by his commitment to reinvest and buy more land and property. His children even make better grades than yours in school. It seems to you that the Japanese-Americans are taking the better jobs and achieving more. Why are these "foreigners" here? Why are they allowed to be so prosperous in your country, using your resources? How can they be stopped from taking over all of America?

ROLE 2

You are a member of the American Legion — a veteran. You recall the Sino-Japanese War and the Russo-Japanese War. You lost a son in the Japanese attack on Pearl Harbor. Your home is next to the Japanese neighborhood in your town. How do you feel about the fate of Japanese-Americans?

ROLE 3

You are running for U.S. Senator from California. You read today's column in the newspaper by Henry McLemore:

"I am for the immediate removal of every Japanese on the West Coast to a point deep in the interior. I don't mean a nice part of the interior either. Herd 'em up, pack 'em off and give 'em the inside room in the badlands. Let 'em be pinched, hurt, hungry and dead up against it . . .Personally, I hate the Japanese . . . ." You will be making a speech to the California Joint Immigration Committee (formerly the Japanese Exclusion League) today. What will you say?

ROLE 4

You are President Roosevelt: Executive Order 9066 is on your desk. Your advisors have indicated that the Japanese-Americans in California pose a threat to national security. Your political connections favor interning the Japanese-Americans because the majority of their constituents are either deeply prejudiced against the financial success of the Japanese-Americans or are caught in a hysterical fear of worldwide Japanese takeover. American forces were severely damaged by the Japanese attack on Pearl Harbor. How will you insure domestic tranquility for western Americans?

ROLE 5

You are a well-respected Japanese-American, a partner in a produce brokerage. You've lived in America since you were six years old. You speak English fluently and are well-educated. You could not become an American citizen because of exclusionary acts in 1924 against Japanese. You are arrested at your home (in your pajamas), handcuffed and taken to jail for two weeks. You are allowed to take NOTHING with you—not even a toothbrush. Later you are moved from camp to camp over a period of three years. In these camps you perform menial tasks for about $8.00 a month.

ROLE 6

You are the businessman's wife. After his arrest, you are left with no income. You sell the family's property to provide money for your family's living expenses and to try to get money to replace the assets you must leave behind. Most of your belongings will go for less than 10% of what you invested in them, if you are fortunate enough to sell them at all. Your bank assets have been frozen so you cannot secure any money. You and your three children are moved to a horse stall where you "live" until the relocation centers are completed.

ROLE 7

You are a teenager in a "relocation center." You attend school, pledge allegiance to the flag and learn about the values of American democracy. You and your family continue to be identified by the number you were tagged with when you boarded the train to Manzanar. The four of you live in an eight-by-twenty-foot tar paper room, furnished with bunk beds and a pot belly stove. You rely on the government for food (about $.39 worth daily) and clothing ($25-$42 annually).

ROLE 8

You are a Japanese-American veteran. You had been working at your first job after high school when you were sent to Manzanar. You and many of your friends took the only avenue toward actively proving your loyalty to America. Your Regimental Combat Team, the 442nd, joined by the 100th Battalion, was composed of Japanese American patriots. You tried to combat the silent enemy, prejudice, as you fought the physical enemy, the Axis soldiers, and became a member of one of the most decorated units in military history. Your unit would take more than 9,486 casualties and lose more than 600 lives in seven major campaigns.

ROLE 9

You are a member of the American Friends Service Committee, a group of Quakers committed to work on various social problems, particularly the unjust detention of the Japanese Americans. Early on you assisted in storing furniture and liquidating assets for the Japanese-Americans. You work to provide textbooks for internees to facilitate education. You participate in fundraising activities to provide money for Hirabayashi's legal defense. Your parents help inspect relocation centers in an effort to provide decent living conditions for internees.

Questions For Discussion:

Examine the following factors contributing to the evacuation and internment of the Japanese-Americans:

1. If you were facing internment, how would you react? Why didn't these methods work for the Japanese-Americans?
2. What other groups might face similar discrimination? How would you defend them against such action?
3. List the constitutional guarantees which were violated. How can future injustices be prevented?
4. In June, 1987, Senator Jesse Helms, R-NC, proposed quarantining AIDS victims. Respond to this proposal in terms of constitutional guarantees for Americans.

EVALUATION

Assign each student a role (or allow each student to select a role) and use one or more of the following assignments to evaluate understandings. To maximize benefits of the experience, share lessons and suggested projects with teachers who can assign simultaneous projects in their classes.

a. Make writing assignments, such as diary entries, letters, poems, short stories or a student-written play. (See M. E. O'Brien's lesson)
b. Draw a poster demonstrating the mindset of the nation.
c. Write a song.
d. Prepare newspaper editorials.
e. Prepare legal arguments for and against the internment.
f. Prepare speeches or debate the issue.
g. Produce the front page of a newspaper from inside one of the camps.
h. Develop a plan for reimbursing the Japanese-American internees.
i. Write a story for elementary students reflecting the abuses of constitutional rights and the values of American democracy.
j. Design a relocation camp.
k. Design a budget to provide care for internees in a camp.

TIPS FROM THE TEACHER

Use one of the sources cited in the bibliography to pull personal testimonies by internees. Both titles provide a wealth of information from pre-war to post-war events. The extensive bibliographies of each book offer suggestions for other books, and individuals to contact.

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Straws and Pins

Gary Mast

Reeths Puffer High School
Muskegon, Michigan

INTRODUCTION

The class will experience various forms of leadership as groups compete in an enjoyable interactive process. The group will be able to compare and contrast the role of citizens, the respect for individual dignity and the productivity of an anarchy, an oligarchy, a dictatorship and democracy. The lesson is especially effective as an introduction to studying the Constitution. This approach to teaching the various forms of political decision making enables students to not only hear about anarchy, oligarchy, dictatorship and democracy but to experience and observe them within the classroom setting.

AUDIENCE

Grade seven through twelve

TIME TO COMPLETE

Two hours or two 55-minute class periods

GOALS

As a result of this lesson, the students will:

- experience and/or observe various forms of leadership
- consider the role of ownership as it affects the decision making process and productivity of the various systems
- compare the dignity and value of individuals in the various systems.

MATERIALS

Milk straws, straight pins and attached score sheet

PROCEDURES

1. The class will participate in a group competition to construct the (a) tallest free-standing, (b) structurally strongest, and (c) most aesthetically attractive structure. The materials to be used are milk straws and straight pins. Contact your school's lunch room supervisor well in advance of this lesson to obtain the necessary number of small milk straws. The school's dairy supplier may donate the necessary boxes of straws. You will need approximately 2000 straws and 300 straight pins per class. Both the clear plastic and paper-type straws work well.
2. Pre-select and instruct group leaders in specific forms of leadership.
   a. Anarchy—leader is to provide no instruction, assistance or expertise. The group leader encourages all to "do their own thing and we'll stick it all together later."
   b. Dictator—leader is to make all the decisions and assign duties to other group members without regard to their desires or talents. This leader is to wield totalitorian authority.
   c. Oligarchy—leader is to choose a minority number of his/her group with whom to share power. This ruling class shall be consulted and assigned leadership tasks. The others are to be directed in the performance of tasks assigned them by the elite ruling class. The form of government is to resemble aristocracies of ancient Greece and the party dictatorships found in communist countries.
   d. Democratic—leader is to treat all group members equally and fairly. Decisions are to be reached by a vote and everyone is encouraged to have input on design, work assignments, etc. This leader should attempt to draw everyone into discussion and put numerous decisions to a vote.

Day One

3. Announce group assignments to the class. Groups should be approximately equal in talent and attitude. Each group should consist of from five to seven persons including the leader.
4. Inform the class that each group's structure will be evaluated on the basis of height, (it must not be attached to the floor, ceiling, etc.), strength, and beauty.

5. Using some of the straws demonstrate that by pinching an end one can slip straws inside one another to make longer building materials. Straight pins may be run through several straws to create a corduroy type material. Joints may be constructed using pins to join the connecting superstructure. Tell the students that each group can obtain more information from their group's leader.
6. Groups are then given 40 to 45 minutes to complete their projects and if possible give their structure a name. Extra students may be assigned the role of observers. Encourage them to take notes on the relative roles of each group.
7. Each participant is given a note card on which to rate the structure of all groups including his/her own. Each structure is to be rated on a scale of 1 to 5 (5 being the best) for each criterion (height, strength, and beauty) and the points totaled to give a composite score. (see score sheet)

Day Two

8. Which groups tended to get the earliest start?

   Half way through the time period who did you think would win?

   Did you notice differences in group member's attitudes?

   Which group(s) accomplished the most in the final 10 minutes?

Sample Questions for Group Members

1. How do you feel about your structure? . . . your fellow group members? . . . your group leader?
2. How did your leader relate to all members of your group?
3. How would you describe your leader? At this time it is revealed that each was to lead in a specific manner. Carefully explain that the dictator and anarchist were only following instructions.

Questions to be Answered by Accumulated Scores

1. Which group project was rated overall best?
2. What type of leadership style was used by this group?
3. How did groups tend to rate their project in comparison to the rating given it by the rest of the class?
4. What can this exercise tell us about the advantages of democracy? . . . about support for leaders? . . . about fair and equal treatment of individuals by their leaders?

TIPS FROM THE TEACHER

The description of this activity is much more complicated than the activity itself. This lesson has been used successfully in over 50 classes and lends itself to numerous innovative variations. While it is possible to reduce the time required, make sure plenty of time is used to discuss the activity.

HANDOUT 1

	Judge's Group #	HEIGHT	STRENGTH		BEAUTY		TOTAL	
PROJECT I	1		1		1		1	
	2		2		2		2	
	3		3		3		3	
	4		4		4		4	
	Total	Place	Total	Place	Total	Place	Total	Place
PROJECT II	1		1		1		1	
	2		2		2		2	
	3		3		3		3	
	4		4		4		4	
	Total	Place	Total	Place	Total	Place	Total	Place
PROJECT III	1		1		1		1	
	2		2		2		2	
	3		3		3		3	
	4		4		4		4	
	Total	Place	Total	Place	Total	Place	Total	Place
PROJECT IV	1		1		1		1	
	2		2		2		2	
	3		3		3		3	
	4		4		4		4	
	Total	Place	Total	Place	Total	Place	Total	Place

"The Bill of Rights in 2010"

Albert Melini

D'Ippolito School
Vineland, New Jersey

INTRODUCTION

This lesson is designed to allow students to examine the Bill of Rights in a unique way. By taking a step forward in time, they apply the Bill of Rights to a future that they may someday inherit. Depending on the grade level and desired sophistication, one or two amendments can be examined or the entire Bill of Rights may be treated in depth. The essence of social studies education is to prepare young people to be humane, rational, participating citizens. Citizenship education which is based on fostering the development of thoughtful decision makers is a key to the structure of any social studies curriculum. To this end, the project outlined here is designed to allow students to participate in a student-centered simulation that focuses on an in-depth examination of the Bill of Rights.

AUDIENCE

This activity is designed for use at the middle school level. With minor modifications, it might be used in grades nine through twelve.

TIME TO COMPLETE

Allow approximately one week to complete the project.

GOALS

As a result of this lesson, students will:

- acquire a meaningful understanding of the Bill of Rights and the rights of individuals in general
- gain basic knowledge of the Bill of Rights
- use and apply critical thinking skills
- examine values with respect to the rights of individuals and constitutional law

MATERIALS

- Each student should have a copy of the project scenario included in the "procedure" section
- Copies of the Constitution and the Bill of Rights should be made available
- It will also be helpful to have items from the bibliography available for references
- Each student should have a notebook to keep a journal

PROCEDURES

Day One:

Use this first day to introduce the activity. Each student should receive the recommended materials. Conduct a discussion on the origins, purpose and structure of the Constitution and the Bill of Rights. Review the following scenario with the students. Then conduct a discussion in which students speculate what life might be like twenty-five years into the future and how this might influence Fourth Amendment search and seizure.

THE BILL OF RIGHTS IN 2010

It is the year 2010. You have been selected to be a delegate to a Constitutional Convention to review the Bill of Rights. It will be your responsibility to examine the current Bill of Rights and to revise the present document, write a new one, or possibly decide that what we currently have provides sufficient protection for our civil liberties at this time and into the future.

Keep in mind that this convention is taking place almost twenty-five years from now. Try to envision futuristic changes that might have a bearing on your discussions, deliberations, and proposals.

Day Two:

Begin this session by dividing the class into committees of five students. Have the groups begin their task of redrafting the Bill of Rights. The members of each committee should understand that there is no need for a group consensus on changes they might wish to make. Each student should be keeping a journal for each session.

Day Three:

If more time is needed to complete the committee work left over from Day Two, adjust as necessary. If the committee work has been completed, have the students present their proposals to the class. Debate on the proposals themselves should be postponed until the following session.

Day Four:

Students should have this time to debate the proposals presented in previous sessions. The teacher should act as a facilitator and encourage as much student interaction as possible. Additional time adjustments may be necessary depending on previous sessions.

Day Five:

This session should be used to conduct a ratification vote on proposed amendments. Devote the remaining time to a debriefing session on the entire activity. If the project was used in one class, a ratification vote might be taken in other classrooms.

EVALUATION

Project evaluations could include: teacher observation, student journals, oral presentations, essays written to promote student proposals (future "Federalist Papers"), student-made test/quiz, student debriefing. Each teacher should use evaluation techniques he or she feels are best suited for their particular class.

TIPS FROM THE TEACHER

Tips for using this activity have been included in the materials and procedure sections. However, it must be emphasized that if students need extra time for creating and debating their proposals, they should be allowed to have it. This is a key to the simulation.

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The Penning of a Class Constitution

Laurie Mitchell

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Beaverton, Oregon

INTRODUCTION

This exercise leads the teacher and students within a classroom through the development of a workable classroom constitution and the penning of their document as a final product. While the activity provides students with an opportunity to discuss the need for rules within the classroom structure and the review of our nation's Constitution, it will also give them a chance to use English skills in writing their own constitution, a knowledge of the writing at the time of the signing of the Constitution, and the creative task of learning how to use an edged pen with ink in writing their creation. The lesson gives many opportunities for extension or may be pared down depending upon grade level, time, and intent.

AUDIENCE

Grades four through eight

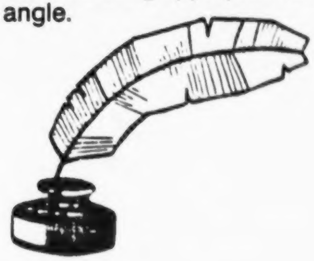
TIME TO COMPLETE

Seven to ten class periods

GOALS

As a result of this lesson, students will:

- be able to recognize famous documents and understand the necessity for rules to govern a group of people
- design a set of rules fair to all by which the classroom can operate
- increase their awareness of the decision making process
- experience "majority rule"
- write in calligraphic form and follow a model letter form, understanding appropriate letter height and pen angle.



MATERIALS

- Large butcher paper for initial group decisions
- Felt-tipped edged pens or pen holders with edged dip pen points or Sheaffer No-Nonsense Pen with calligraphy nibs
- Desirable: Copies of the Magna Carta, Mayflower Compact, Declaration of Independence, The Constitution, and the Bill of Rights. Recommended calligraphy instruction books are also mentioned in this lesson.

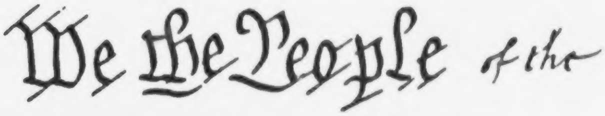
PROCEDURES

Part I—Background and Development of Classroom Rules

1. Display and discuss reproductions of the Magna Carta, the Mayflower Compact, the Declaration of Independence, the Constitution, and the Bill of Rights. Explain why each was written at that time in history and look at the format of each. Note the beginnings of each document.
2. Lead students in a discussion of the need for a classroom constitution in which all have a role in writing. Discuss the need for rules, the audience intended, the consequences when rules are broken, and ways to add or change rules.
3. In a large group discuss these issues:
   - What kind of class do you want?
   - What are the limits of classroom rules?
   - List suggested areas of rules such as talking, hall passes, class preparation, etc.
   - In addition to class rules, why must building and district rules also prevail?
   - Will each rule agreed upon be fair to all class members?
   - What is classroom freedom? How do we secure it?
   - How do we mix classroom freedoms and responsibilities?
4. Divide the class into groups of three to five students. Using the class discussion regarding the need for rules and the above guidelines, have them suggest rules they feel would build an effective classroom climate. They should limit their list to the best seven to 12 rules. Each group should write them on large pieces of but-

cher paper and post around the classroom.

5. Regroup class and discuss proposed options. Rule out duplications, combine and reword those with similar purposes. Limit to a workable number those which treat each student with fairness.
6. Because these rules will govern each student's role (as well as the teacher's!) it is important that everyone knows that the majority rules. While some refused to sign the U.S. Constitution, they, nevertheless, had to abide by the majority. Discuss "faith in the majority."
7. Interpretation of rules is simplified if they are written in clear, concise terms. Write and rewrite until a common understanding is reached.
8. Develop procedures for rule additions or changes. When? How?
9. Class rules take effect immediately with a ⅔ majority vote.
10. Display one large classroom constitution for viewing; prepare for each to write their own.


We the People of the

11. Suggested forms for the constitution:

"We, the undersigned students of _________'s class, in order to attain a better education, hereby agree to abide by the principles set forth in the constitution we have made by agreeing...."

or

"We, the students of _________'s class, have met in our classroom at _________ School with the purpose of establishing a classroom based on the principles of (noun) , (noun) , and (noun) . We believe that all students and our teacher.... Furthermore, we believe that .... We will attempt to make this a classroom in which .... We will not have the right to .... To accomplish this we will try our best.

Part II—Instructing Students in the History of Writing, the Penning of the United States Constitution, and the Writing of the Classroom Constitution.

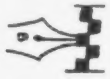
1. History: Until the beginning of the 17th century, the broad-edged, square cut pen was used more than any other writing instrument. With the invention of the printing press, and the gradual influence of engraving, the pointed writing tool, the quill, replaced the broad-edged pen. Quills continued in use into the nineteenth century when steel pens were produced. The pens required frequent dipping into inkwells and spillage of ink was always a hazard. Dipping continued in use into the twentieth century when fountain pens, followed by the ball point, were developed.

Students will likely be interested in knowing that the famous quills seen in the promotion of the Bicentennial of the Constitution and in famous pictures lacked the extensive plumes displayed so frequently. Scribes used the first five flight feathers of either wild geese, turkeys, or swans in making quills. The quill, in its natural state, is covered with a greasy membrane on the outside and contains soft pith on the inside. Both of these substances must be removed before the quill can be cut. In doing so the plume is shortened considerably (for balance) and the barb of the feather is also stripped away.

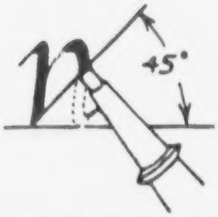
Who penned the United States Constitution? Writing with a feather quill, the scribe was Jacob Shallus, the son of a German immigrant. He served as the assistant clerk to the Pennsylvania General Assembly and was given 40 hours to transfer the 4,440 words to the four sheets of parchment. It is reported that he was paid $30.00 for his efforts.

At the time of the signing of the constitution, ordinary citizens (much like the secretaries of today) were given the job of copying script on parchment or vellum. The vellum was made from the skins of calves, goats, or sheep; parchment, made from the inner side of split sheepskin, was favored. The process of making writing materials was costly and tedious.

2. The Writing of the Classroom Constitution:
   a. Locate writing utensils for students. Most economical for classroom use are felt-tipped pens with a square edge. The usual cost ranges from $.75 to $1.00. Sheaffer Calligraphy kits are excellent. Pen holders with dip-edge pen points are also satisfactory. Be sure to use only fountain pen ink (Script or Pelikan) and not Higgins black eternal!
   b. If using the felt-tipped edge pen, regular lined writing paper is satisfactory as a guide for practice and later as a guide for underneath the final copy, which might be completed on unlined paper.



   c. To determine the appropriate letter height, the pen is held horizontally to mark off the pen widths to measure the height of lower case and capital letters. Lower case letters should be no taller than five pen widths and caps should be 7½ pen widths high (or 1½) times the body height of lower case).



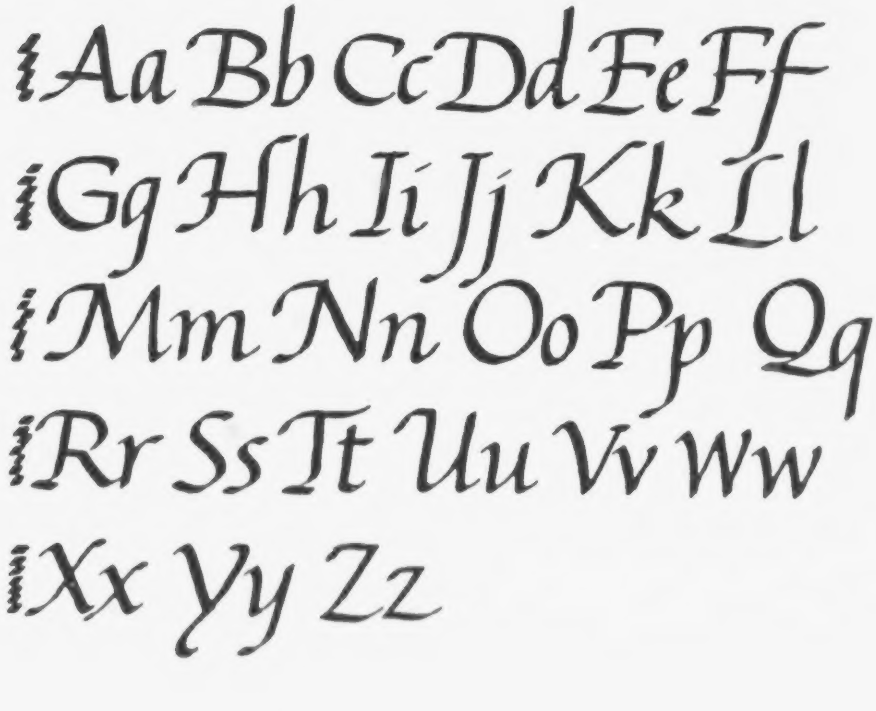
d. The pen edge consistently lies at a 45 degree angle to the writing line, which allows the pen edge to form the correct thicks and thins as the letter is written.

e. While the classroom teacher may wish to illustrate the cutting of a quill for the class, it is, in reality, a tricky procedure, one taking practice to produce the writing edge desired. The cutting of a quill for each student and the making of ink, although intriguing, may overshadow the purpose of having each student complete the writing of the classroom constitution with the easiest of conditions and the least frustration for teacher and students.

A wonderful source available to the classroom teacher is the Sheaffer Calligraphy kit "Celebrating the Bicentennial Signing of the U.S. Constitution and the U.S. tour of the Magna Carta in 1987." Included in this kit is an authentic quill pen, a fountain pen, three calligraphy nibs, a history of writing, and warm-up exercises for writing about the Constitution. Place orders with ADSPEC, P. O. Box 480, Spokane, WA 99202 or call 509-535-5719 (ask for Todd). The cost is $14.95 per kit; add $1.25 for shipping, and Washington residents include $.78 tax.

f. The most complete source I know of in teaching students calligraphy for written work or projects is ITALIC LETTERS:Calligraphy and Handwriting by Inga Dubay and Barbara Getty. (Prentice Hall Press, Simon & Schuster: ISBN 0-761-61185-2, $14.95). Their Italic Handwriting Series (Book G) ISBN 0-87678-006-0 provides an outstanding background for writing.

g. This basic alphabet is an easy one to follow for the writing of the classroom preamble. God luck! The project takes a class from chaos to order, and your students will love the final product and will have their personal copy for review and for the collection of classmates' signatures.


Aa Bb Cc Dd Ee Ff
Gg Hh Ii Jj Kk Ll
Mm Nn Oo Pp Qq
Rr Ss Tt Uu Vv Ww
Xx Yy Zz

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Elementary Mock Trial

Michael R. Morris

Etolin Street School
Sitka, Alaska

INTRODUCTION

The mock trial and pre-trial activities are designed to apply some of the concepts learned in the study of the United States Constitution. Specifically, the Fifth, Sixth, Seventh and Eighth Amendments are used to show students some of their due process rights and responsibilities. Using a series of field trips and guest speakers which culminate in a mock trial, students may experience the workings of the Constitution. Students will also have an opportunity to question those individuals who work with the Constitution on a daily basis—police officers, lawyers and members of the judiciary. If students can experience a situation or concept, they will be more likely to learn from it and retain more of the content than they would by simply reading or hearing of it. The subject of the mock trial is shoplifting. Students role play the various participants that would be found in an actual trial. Given the number of juveniles that are appearing in court and the problems of shoplifting, the mock trial and its topic are very timely. Through this lesson students will gain critical thinking skills, and an appreciation for and understanding of the justice system. Additionally, art and language art skills are enhanced by this unit.

AUDIENCE

Upper elementary and middle school students

TIME TO COMPLETE

Approximately seven class periods

GOALS

As a result of this lesson, students will:

- understand the Fifth, Sixth, Seventh and Eighth Amendments to the Constitution and how they apply in an actual situation
- increase their communication skills
- develop their critical thinking skills
- apply legal principles to factual situations

MATERIALS

Copies of the Constitution and the Bill of Rights.

Handout 1—Elementary mock trial

Handout 2—Sample of panel discussion evaluation questions

Handout 3—Sample of mock trial evaluation questions

PROCEDURES

1. Instruct students on the historical background of the Constitution and the Bill of Rights. Include viewing any appropriate filmstrips, movies or other material that might assist students in understanding how the Constitution works.
2. Involve the students in any combination of the following: Presentation from a lawyer to discuss the Constitution and how it relates to the attorney's work with the law. A police department field trip to learn how the police officer's work is affected by the Constitution. A field trip to a court to learn how a judge's work is affected by the Constitution.
3. Discuss with the class the problem of shoplifting. Have students formulate questions they will be willing to ask of actual shop owners. Invite a group of business people to participate in a panel discussion answering student questions on the legal issues involving shoplifting.
4. The preparations for the actual trial itself can be accomplished in one day. One to two hours will be needed to prepare the students to role-play attorneys and witnesses. Attorneys need time to write questions for both defense and prosecution witnesses and time to talk to their own witnesses. The attorneys will also need to prepare opening statements and closing arguments. Judges and jurors can be taken aside during this time and have court proceedings and responsibilities outlined for them. It is good to spend time on separating fact from opinion.
5. Assign the roles, attorneys, judge, witnesses, jury. Choose two to four attorneys for each side. You may wish to have a lawyer advise the students as they prepare their roles. We did not and it worked out fine.

6. Conduct the Mock Trial followed by jury deliberations and verdict.

EVALUATION

This will take place at several points.

Before each field trip or visit from a community resource person students should write questions to be asked. Video tape the trial to use in debriefing and discussion of the trial.

TIPS FROM THE TEACHER

While the jury is deliberating you may want to begin some de-briefing of the attorneys and witnesses.

Before we arrived at a point where the trial was a meaningful experience for the children, we had to give them as much background as we possibly could.

If you do invite practicing attorneys to participate, *be sure* you limit them as to time and topic.

If you visit a police department, be sure they know exactly what you expect to see.

If you visit a courtroom or have a member of the judiciary as a guest, be sure to provide an agenda for them. One pitfall here is questions from the class dealing with sensationalism. One way around this is your previous preparation with the class—written student questions.

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HANDOUT 1

ELEMENTARY MOCK TRIAL

PARTICIPANTS

Judge
Prosecution attorneys
Defense attorneys
Witnesses for prosecution
Witnesses for defendant
Bailiff
Jury
Representatives of the media (sketch artist, reporter)
Court reporter

OPENING OF TRIAL:

Bailiff: "Please rise. The Court of ______________ is now in session, the Honorable :______________ presiding."

(Everyone remains standing until the Judge is seated.)

Judge: "Mr. (Ms.) Bailiff, what is today's case?"

Bailiff: "Your Honor, today's case is State v. Fredrickson"

Judge: "Is the prosecution ready? Is the defense ready?"

Attorneys: Yes, your honor. (Always say "your honor" when speaking to the judge.)

Trial Procedure:

OPENING STATEMENT—prosecuting attorney introduces himself or herself and states what their side hopes to prove. Begin with "Your honor, members of the jury," then state what the facts on your side will show and ask for a guilty verdict.

Defendant's attorney then says, "Your honor, members of the jury," introduces himself or herself and explains the evidence on his or her side that will deny what the prosecution is attempting to prove. Ask for a not-guilty verdict.

THE OATH: All witnesses are sworn in before they begin answering questions. This is to remind them that they must tell the truth. The Bailiff asks the witness to raise his or her right hand and then says "Do you swear to tell the truth, the whole truth, and nothing but the truth?"

DIRECT EXAMINATION—prosecution asks its first witness to take the stand. Prosecutor asks the witness clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. For example, the attorney may ask "What happened on the night of March 15, 1985?" He or she may then ask "What happened next?" or "What do you remember?" Witnesses may make up answers to questions that are not included in the witness statement or the witness may say "I don't know."

CROSS EXAMINATION—defense attorney questions witnesses for the prosecution to try to prove that the witness is lying or can't remember. For example, the lawyer may ask, "Isn't it true that you really couldn't see because it was almost dark outside?"

After all the prosecution witnesses have been questioned and cross-examined, the defense calls its witnesses and questions them under direct examination. Then the prosecutor cross-examines.

CLOSING ARGUMENT—prosecuting attorney summarizes the testimony presented during the questioning in a way that will convince the jury to believe the prosecution's side of the case. Prosecution asks the jury to find the defendant guilty.

Defendant's attorney summarizes the testimony in a way that makes the defendant look not guilty. Defense then asks the jury to find the defendant not guilty.

JURY DELIBERATIONS—after hearing the judge's instructions, the jury meets to decide guilty or not guilty, and then gives their verdict to the judge.

Criminal Mock Trial
District Court

State of Alaska,)
Prosecution)
vs.) M.T. No. 1
Tori,)
Defendant.)

FACTS

On Friday, March 13, 1987, Tori Fredrickson was at the Rock Rack. She was looking at some audio tapes. After receiving help from the clerk she continued to stand in the area of the tapes. The clerk noticed her placing something in her pocket. When Tori came to the counter she paid for one tape, "Slippery When Wet" by Bon Jovi. Maeve Taylor, the clerk, was certain that Tori had another tape in her inside pocket of her jacket. Maeve called the store owner Mike Gassman and together they checked Tori's inside pockets. She did have an additional tape in her pocket, "51-50" by Van Halen. It was still in the original wrapper and had the store price tag on it. The police were called and a citizen's arrest complaint was filed with the Sitka police.

The State has charged Tori with concealment of merchandise with intent to take the merchandise out of the store.

ISSUE: 1. Did Tori Fredrickson take the tape?
2. Did she intend to steal the tape?

WITNESSES

Prosecution witnesses	*Defense witnesses*
Maeve Taylor, store clerk	Hooly Reed, friend of Tori's
Mike Gassman, store owner	Tori
Calie Spriggs, part-time store clerk	Melissa C., neighbor of Tori's

WITNESS STATEMENTS

PROSECUTION WITNESSES:

Statement of Maeve Taylor

I am a full-time clerk for the Rock Rack. I have worked there for six years. Tori was in the store after school on March 13. I noticed her because she kept looking around, and seemed nervous. I observed her looking at the audio tapes. I asked her if she needed help and she said yes. I helped her locate the two tapes she was looking for. I noticed that she continued to hang around the tape section. I turned around and looked in the mirror behind the counter and saw Tori place something in her jacket pocket. When she came up to the counter to pay for the tapes she only purchased one. I suspected that she had another in the inside pocket of her jacket. I called the store owner Michael Gassman and we both checked Tori's pockets. The tape "51-50" was in her inside pocket, still wrapped and with the store's price tag on it.

Statement of Michael Gassman

I am the owner of the Rock Rack. I was called to the front of my store a little after 3:30 by my clerk Maeve Taylor. Maeve said she suspected that Tori had a tape hidden in the inside pocket of her jacket. We checked and she had a Van Halen tape "51-50." It was still wrapped in its original packing and had the store's price tag on it. At this point I decided to call the police and have Tori charged.

Statement of Calie Spriggs

I am a friend of Tori's and a part-time clerk at the Rock Rack. On the morning of March 13, 1987, Tori asked me if we had two tapes at the store. One was "Slippery When Wet" and the other "51-50." I said yes we did. This conversation was held by our lockers before school started. Tori said she needed the tapes for a party on Saturday.

DEFENSE WITNESSES:

Statement of Holly Reed

I am a friend of Tori Fredrickson's. I had promised to meet her at the Rock Rack after school. I was late getting there because I had to see one of my teachers after school. When I arrived at the store Tori was already there and looking over the tapes. She had one of them in her hand. She was carrying her school books in the other. She said she had decided to buy only the Bon Jovi tape. She reached in her pocket to check and see if her wallet was there and check how much money she had. When we went up to the counter Tori paid for the one tape. The clerk called the store owner. They wanted to see her inside pockets. It had a tape in it. I thought she had put it back and had only the one tape.

Statement of Melissa Calhoun

I am a neighbor of Tori's. I have known her since she was a small child. I have had her over to our home on many occasions. We have never had any trouble with her. She is always doing things for us and making gifts for us on Mothers' Day and birthdays and Christmas. I just can't believe that she would do such a thing.

Statement of Tori Fredrickson

I went to the Rock Rack to buy two tapes for a party I was attending on Saturday, March 14. I was supposed to meet Holly at the store. She wasn't there when I arrived. I went over to the audio tape section and began looking at them. Holly had still not arrived and I began to look around for her. I didn't want to miss her. The clerk came over and asked if I needed some help. I said yes I did and she showed me where the Bon Jovi and Van Halen tapes were. I thanked her. I decided to buy just the Bon Jovi tape. I checked to see if I had my wallet which I keep in the inside pocket of my coat. About that time Holly showed up and we talked about the tapes. I went to pay for the one and when I had done so the clerk said I had another one in my pocket. She called the store owner and they made me empty my pockets. There was another tape there. I had thought I put it back. I must have put it in there by mistake when I checked for my wallet. The store owner then called the police and had me arrested and charged with theft.

INSTRUCTIONS

The prosecution must set out such a convincing case against the defendant that the jury believes "beyond a reasonable doubt" that the defendant is guilty.

The Law

Alaska Statute sec. 11.46.220
A person is guilty of concealment of merchandise if a person conceals the merchandise while still in the store with the intent to take the merchandise out of the store.

Concepts

1. Circumstantial evidence vs. direct proof
2. Credibility of witnesses
3. Burden of proof; beyond a reasonable doubt

HANDOUT 2

QUESTIONS TO BE ANSWERED BY STUDENTS AFTER THE PANEL DISCUSSION

1. What reasons do people have for shoplifting?

2. Does this reason make any difference as far as the law is concerned?

3. What may a store-owner do if he or she believes someone is shoplifting?

4. What people seem to be shoplifters?

5. Why do you think shoplifting is a crime?

6. Who pays for the protection stores need?

7. Who pays for the merchandise that gets stolen?

HANDOUT 3

QUESTIONS TO BE ANSWERED BY STUDENTS AFTER COMPLETION OF THE MOCK TRIAL

1. How was due process given to the defendant?

2. In what way(s) was the defendant able to confront the witnesses against her?

3. Did the defendant receive a good and adequate defense? Why or why not?

4. Did the sentence comply with the eighth amendment? Should the judges' decision have been more severe? Less severe?

5. Did you agree with the jury's decision? Why? Why not? What things did you take into consideration in coming to your decision?

6. Did the witnesses stick to the facts of the case or were their opinions given?

Unfolding Complex Constitutional Issues Via Student Composed Plays

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INTRODUCTION

Guiding students in writing plays to teach themselves and others a complex constitutional issue is fantastic fun and challenging! When students incorporate team research into a play of their very own creation, involving their very enthusiastic classmates, the learning and retention is amazing.

Further, play research and writing is totally flexible in that it can involve as little or as much time as the teacher deems appropriate. Play writing, once learned, can readily be implemented time and again across the curriculum. Student enthusiasm increases, rather than decreases, with judicious repetition of the process. Play research and writing incorporates team work, research, writing and critical thinking, originally presented. The lesson fits into many curricula repeatedly after its introduction.

AUDIENCE

The beauty of this lesson is that the target audience is virtually unlimited—from fourth grade up—although the play research and writing will be most readily implemented from seventh grade up.

TIME TO COMPLETE

Here, too, great latitude is possible. Instruction could conceivably be done in one full class period with the actual work done outside class. However, a full week for in-class help and sharing is ideal the first time this project is attempted.

GOALS

As a result of this lesson, students will:

- develop research skills
- make judgments about the long range significance of a given constitutional issue
- work closely with another person
- present, organize and direct a play
- see a new way of studying the Constitution
- HAVE FUN!

MATERIALS

A basic library for research

PROCEDURES

1. Have students familiarize themselves with play formats by looking through scripts, books and magazines found in the classroom, home or library. Class then brainstorms a list of what format includes.
2. Have students together make a list of potential constitutional issues to pursue.
3. Have pairs of students select an appropriate topic from class list or an additional teacher approved topic about which to write an historically accurate play to teach others what they have learned. (Of course, individual and larger group efforts are also acceptable.) The students should use a minimum of three resources, depending on availability. Primary sources, such as judicial opinions and journals, should be stressed. A formal bibliography should be presented with the play script.
4. Involve one-third to one-half the class at production time. A fairly long list of characters is advisable. This is readily accomplished a) with several narrators setting the various scenes and b) through crowd scenes in which "The Public" debates the pros and cons of the Constitutional issue at hand.
5. The exposition of the Constitutional issue can be quickly done in the play's foreword, called something like "About This Play." This is done briefly in four or five paragraphs to set the scene historically for the audience.
6. The body of the play unfolds the drama of the Constitutional issue involved. Dialogue will include actual verbatim comments, parts of judicial decisions, and famous "quotable quotes." Student-composed dialog will strive for historical accuracy in presenting the Constitutional issue and its resolution.
7. To conclude the teaching an afterward similar to the foreword will instruct, in four or five short paragraphs, what the Constitutional significance of the issue in the play is. The student writers will have to decide the appropriate level of sophistication in the language of the foreword and afterward. For instance, seniors writing for a sixth grade audience on the John Peter Zenger case would have to consider the presumably limited background of the audience and address this.

EVALUATION

- Ongoing. Teacher should use several quick conferences to check sources and help with dialogue.
- Student teams should exchange papers, with each team being required to write at least one positive comment on the play and at least one helpful suggestion for change on each play read. The comments should be initialed by the evaluators, with students reading several plays each. (Copies of the plays should be made to facilitate the process and to avoid the chance of a play being taken home for reading and lost.)

TIPS FROM THE TEACHER

Taping for posterity and fun is a great way to share the plays. Warning—it is very time consuming, and times other than classtime are best for this. Several books of the plays can be put together and placed in the library, in the classroom, or in the teacher's lounge and brought home to share with family. This is a great chance to incorporate student art work. The plays can be presented to other classes and even to other schools within the district, time permitting. HAVE FUN!

The following topics have been successfully researched and taped by my students, whose grade levels included 7 through 12 and ran the gamut of ability:

Bethel School District #403 v. Fraser, 106 S. Ct. 3159 (1986). In this case a high school student, Matt Fraser, was given a three day suspension by a school administration offended by Fraser's nominating speech for a fellow student, which was laden with sexual innuendo. The Supreme Court ruled Fraser's First Amendment rights were not violated because his suspension was based on the sexual language and not the politics of the election. The Supreme Court here drew a distinction between purely political speech which is protected, and sexually vulgar speech, which is unprotected.

Miranda v. Arizona, 384 U.S. 436 (1966). This landmark decision establishes the familiar Fifth Amendment warning of the right-to-remain-silent to anyone undergoing a custodial interrogation. The suspect may waive the right to silence voluntarily, knowingly and intelligently.

Regents of the University of California v. Allan Bakke, 438 U.S. 265 (1978). "Reverse discrimination" as a violation of the Fourteenth Amendment's guarantee of equal protection of the laws in issues involving equality of opportunity was the focus of Bakke's suit. Bakke contended that he was denied admission to the University medical school because the university admissions policy improperly used race as a criterion in what amounted to reverse discrimination against him.

Engel v. Vitale, 370 U.S. 421, 1962. This case deals with the issue of prayer in public schools. The issue was whether or not a brief, nondenominational prayer authorized by the state violated the First Amendment.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). In Tinker, students protesting the war in Viet Nam wore black armbands to school to publicize their position. The students were suspended because the armbands were deemed potentially disruptive. They sued the school district successfully, claiming the armbands were a symbolic expression of their First Amendment right to freedom of speech.

New Jersey v. T.L.O., 469 U.S. 325 (1985). In T.L.O., a student accused of smoking in the girls room had her purse taken by the Assistant Principal to look for cigarettes. While doing this he also found marijuana, money, empty plastic bags, lists of students owing T.L.O. money, rolling papers and two letters suggesting the girl dealt in marijuana. She was suspended for drug dealing and the evidence was turned over to the police.

At her hearing, her attorney argued that evidence had been taken from her purse in violation of her Fourth Amendment right to be free from unreasonable search and seizure.

In conclusion, the list of cases and topics is limited only by the sleuthing energy of the class. The impeachment and trial of Andrew Johnson, the John Peter Zenger Freedom of the Press trial (1735), the trial of Matthew Lyons for breaking the Alien and Sedition Act (1798)—the scope is endless!

Our Constitution in the Eyes of the Beholder

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INTRODUCTION

This lesson describes a culminating activity following a unit of study which focuses on the basic ideals and the historical background of the United States Constitution. Following a study that includes the historical events that led to the creation of the nation, the basic organization of government, and the Preamble and the Bill of Rights, students will create books, posters, or games that will help them in explaining these concepts to children in first grade. Students will be teaching other children, an experience that concentrates on cross-age peer tutoring. The study of our country's heritage is better understood when the student is asked to explain the basic concepts to other students. This lesson teaches both oral and written language arts skills through interviewing and by creating books, posters, or games for six- to seven-year-old children.

AUDIENCE

This lesson is designed for grades five through eight.

TIME TO COMPLETE

Approximately two weeks

GOALS

As a result of this lesson, students will:

- identify major historical events leading to the making of our United States Constitution
- explain what the Preamble is and what it means
- explain the basic organization of our federal government
- explain what the Bill of Rights is and how it relates to the Constitution
- develop skills in both oral and written communication
- enjoy the sharing and understanding that younger children possess, and thus strengthen their own understanding of our heritage and ideals

MATERIALS

Any middle grade social studies series that focuses on early American history, the formation and ratification of the Constitution, a study guide handout on the interviewing process (see Handout 1),

An overhead projector or chalkboard to record the brainstorming sessions,

Paper, poster board, and art supplies for making books, posters, and games,

Student-made folders for keeping notes and first-draft stories.

PROCEDURES

1. Meet with the first grade teacher to review the unit and the potential benefits to all students. Obtain a first-grade class list for making interview assignments. Determine the best times for setting up interviews. Determine how best to accommodate teaching schedules of the classrooms involved.
2. Discuss and record major events students remember from their study of early American history, the Revolutionary War, and the creation of a new nation.

   The first three to five minutes students might do individual brainstorming. Then, the students might participate in whole class discussion.
3. Introduce the Interviewing Process. The following is the assignment for middle grade students; it should be discussed in class first.

The Assignment Mission:

You are to interview a first grader and think of a way to explain the United States Constitution to children of that age. The purpose of the interview is to find out what first graders already know about our history and our government so that you can make decisions about what you will need to explain to the younger children. After the interview and with all the information you have collected and studied, you are to design and write a book with illustrations, make a poster, or develop a

253

game that might help a first grader appreciate what a beautiful living document we have in our United States Constitution.

Are You Ready?

You have been studying the United States Constitution: the basic structure of government, the role and function of the three branches, the historical events that led to the creation and ratification of this living document, and the Bill of Rights. You have rewritten the Preamble of our Constitution in your own words. Why do you think that assignment was given? Did you have a better understanding of the Preamble when you used your own words? Now you have some of the basic skills and information to begin your assignment.

4. Discuss the handout students will use during the interviewing. Role play an interview session.
5. Assign a first grader to each student and begin the interviewing. Depending on the individual situations, interviews may be scheduled throughout the rest of the day
6. After the interviewing, the students will be making their first-draft books, posters, or games. The following procedures are recommended:
    - Have students share what they learned about six- and seven-year-old children. How did they feel during the interview? Were there any surprises about what first graders know or do not know?
    - Ask whether the students have any ideas for their assignments. Share and record these.
    - Ask students what is their favorite part of the Constitution or its history. Again, record this. This might be helpful for those who have a hard time focusing on what to write.
    - Set a due date for the first draft project.
7. Students work on final drafts of their projects. Students can work in groups of three or four to share their ideas and discuss improvements. Peer conferencing gives excellent feedback to students. The focus of the conference is around these questions:
    - What is the best part of this project? Why?
    - Is there a main topic? What is it?
    - Is this project readable to young children?
    - What needs improving?

Time should also be arranged to have students share their final products with the first-grade children.

EVALUATION

The evaluation is based upon the projects themselves. If there is any misinformation, it will appear in the first draft of the projects.

TIPS FROM THE TEACHER

Be open for discussion and sharing. Students love to talk with younger children. Their reactions are important to have shared with their classmates and you the teacher.

It is very important to obtain permission from an individual student to share in open discussion about his or her project when it contains misinformation. Explain how we all learn from our mistakes. With permission, the project is read or shared. Can the class pick out the mistake or misconception? Can they suggest corrections? The skill of critical and constructive criticism is both difficult to learn and important in a participatory democracy.

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Buggey, Jo Anne. *Our United States.* New York: Allyn and Bacon, Inc., 1983.

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HANDOUT 1

WHAT SHOULD YOU REMEMBER WHEN INTERVIEWING?

1. Make the first grader feel comfortable and explain your assignment.
2. Ask for the child's name and age.
3. Let the child know that you are writing down information to remember it.
4. Start with questions you think the child might know. Say it is O.K. if the child doesn't know an answer.
5. Ask the first grader to show you a favorite book or their favorite book character.
6. Smile, relax, and enjoy this. Go for it.

SAMPLE QUESTIONS FOR YOUR INTERVIEW

1. Who is the President of the United States?
2. What does the President of the United States do?
3. What are laws?
4. Why do we have laws?
5. Who can make laws?
6. How do we keep the laws?
7. Who was the first President of the United States?
8. When you hear the word, government, what do you think of?
9. What does "rights of the people" mean?
10. Have you heard of the Bill of Rights?

NOW, YOU THINK OF SOME QUESTIONS!!!

Crisis Decision Making Skills—A Simulation

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INTRODUCTION

The Constitution is the power and authority of the central government over the people and the states. It does not tell us how public matters are decided by elected or appointed officials.

Government is a process of decision making. The following simulation requires the students to make decisions dealing with a crisis situation. There are four basic methods of decision making: dictatorial, authoritarian (oligarchy), democratic, and anarchic. Because the nation is a democracy, it is hoped that the elements of democracy will be used by American secondary students. There is a built-in democratic bias in the simulation, but it is not necessary that it be used in order to play this government game. The results attained and the methods used to achieve those results may be referred to by the instructor throughout the government unit.

If the students do try to meet the crisis situation democratically, their democratically-arrived-at decision will involve, among other elements, prior consent to majority rule, free speech, and some form of election or vote which compels some action to be taken.

Unanimity is highly unusual in any problem of a public nature. For this crisis situation it would be natural for several solutions to the problem to be suggested. How the matter of dissent and opposition to majority rule is handled by the participants is of great importance during the simulation and the debriefing to follow. The simulation requires students to make group decisions which may include the democratic process.

AUDIENCE

This simulation is for high school or junior high school students involved in either civics or constitutional history courses. It is suggested that the simulation be used at the beginning of the government unit.

TIME TO COMPLETE

The simulation and debriefing should take no more than one to one-and-a-half class periods—45 to 75 minutes.

GOALS

As a result of this lesson, students will:

- attain an increased understanding of the democratic process as they deal with social organization, majority rule principles, consent of the governed, freedom of speech, parliamentary procedures, the role of natural leadership or natural aristocracy, dictatorship, chaos management, and voting procedures (actually making decisions); be able to see the relationship between democratic principles and group decision making.

MATERIALS

No special materials are needed to play this simulation.

PROCEDURES

Role of the Instructor

- Define the words "democracy" and "parliamentary procedure."
- Draw a simple line drawing of a river valley on the board.
- Near the drawing place the numbers 5, 10, 15, 20.
- Students may be seated in a circle or merely left in their normal seating arrangement.
- Read the following instructions to the students.

> You are on your summer vacation with your family or a small group of class friends at a national park in a public camp ground. The only people left in the camp are teens and a few small children. All of the adults and older teens have gone off to hike, fish, take nature photos, or look for wild plants, or they are otherwise engaged away from the camp. It is a clear morning, unlike the past few days during which the weather was unusually wet and rainy. Suddenly, a forest ranger vehicle roars into camp with its lights flashing and its siren screaming. Over the CB public address system the ranger excitedly calls everyone

in the camp to assemble at once. This is what he says:

"This is an extreme emergency. This is no drill. The dam upstream has failed, and a wall of water is rushing down on you at this very minute. You must locate as many people from this camp as you possibly can, as quickly as possible, and save yourselves. Because I do not see any adults, you high school students are in charge. I cannot stay to help you because I must warn another camp ground further down stream. Every minute counts."

With that he guns his engine and drives away at great speed.

Since this is to be a timed simulation, the teacher should note the exact time at this point. Every five minutes the teacher will erase one of the numbers he has already placed on the board. After ten minutes the teacher will announce that there is a rumble and roar coming in the distance up river.

The students are given no other information other than what they heard from the ranger. The teacher is neither a resource nor a guide. *The students are on their own.* The students may address themselves to this crisis any way they wish. The teacher should note what decision-making system or systems were used, who contributed to the organization that began to emerge, or who complicated the process of decision making. The teacher should try to note any important words or phrases used by the students to get a grip on the problem.

Debriefing

The debriefing follows immediately after the number 20 is erased from the board, regardless of whether any decision has been made. In the debriefing, the first thing to be done is to have a written statement made by each person in the class. The following questions should be answered.

1. What was the crisis all about?
2. Who was in danger in the simulation?
3. What was each person asked to do during the game?
4. What did you do?
5. Was everyone saved?
6. Why or why not?
7. What would you have done differently during the game if you had had more time?
8. What was the method of decision making, and was it consistent with the word "democracy" that you looked up as a vocabulary homework assignment?

Regardless of how the game came out, the results of the simulation can be referred to throughout the unit on government.

EVALUATION

Homework: "Now that you have time to think about the problem of finding the missing campers and saving as many people as you can, what orderly process of decision making would you suggest they follow?"

Assignment to be turned in the following day.

The People The Constitution Forgot

Karen Tryda

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INTRODUCTION

The social studies curriculum offers many opportunities to develop critical reading and reasoning skills. This lesson is designed to encourage students to think and reason about the way the Constitution of the United States was developed and to discover and understand why there were groups of people not originally included as participants in this system. Through enrichment activities, students will further develop research and reasoning skills. Through an examination of the United States Constitution and the Constitution for George Washington Middle School, students will develop an understanding of the way a constitution is constructed, ratified, and used as an underlying structure to govern a group. They will identify the parts of the governmental structure, and identify groups of people who may not have been included as part of that system. Students will develop plans to ensure that their school constitution treats all groups fairly and equally.

AUDIENCE

Grades six through eight

TIME TO COMPLETE

Four or five class periods

GOALS

As a result of this lesson, students will:

- explain how a constitution is constructed, ratified, and used as an underlying structure to govern a group
- identify the parts of the governmental structure and identify groups of people not included as part of that system
- construct a school constitution that treats all groups fairly and equally

MATERIALS

- A copy of the document, "Constitution for the George Washington Middle School," for each student.
- Research materials for class use such as copies of the school constitution, and books about women, Indians, and blacks that describe their struggle to gain their civil rights.

PROCEDURES

Have students read the George Washington Middle School Constitution.

- Examine the preamble with the class and explain its purpose.
- Compare this constitution with the Constitution of the United States by identifying the similarities in format (preambles, articles, and sections).
- Identify the three branches of government incorporated within the George Washington Middle School Constitution and compare them with the three branches identified in the Constitution of the United States.
- Lead a discussion on the George Washington Middle School Constitution.

Suggested Discussion Questions:

1. Who benefits from this constitution? Explain.
2. Are you pleased with the articles and sections of this constitution? Why/Why Not?

Note: Students should notice the inequalities and the groups of people who are kept from participating in the elections or serving as members of the governing body if the constitution remains unchanged.

- Divide the class into groups of three to five students. Appoint a chairperson and a recorder within each group.
- Instruct the class to determine what groups have been omitted from the George Washington Middle School Constitution.

Suggested Responses

- people who don't normally have blue eyes and blond hair
- poor people

- Ask each group to make a list of changes/amendments they think might be made to create a document that treats everyone fairly. (Lists of changes can be made on large chart paper for display.)

- Reconvene the class. Display and discuss the list of changes the class feels necessary to ensure a fair document. The chairperson from each group will present the list. Lists should be written on the chalkboard, large chartpaper, or a transparency. Save them.
- Introduce the words ratify and ratification to the class; explain that the words mean to approve and confirmation.

  Ask the class if they would ratify their school constitution as is. Explain and discuss their answers.
- Using the lists of changes made by the groups, students should note those that are the same. Then, as a class, rank them in order of importance.
- Decide which of them should be added to the constitution. Take a ratification vote.

  If time permits, the teacher may have the class prepare a three-minute presentation of their amendments in an effort to persuade others to their point of view.
- Examine the United States Constitution and note who the people were who were left out of it (children, women, Blacks, and Native Americans).
- Using their textbook copies of the United States Constitution, students should examine Article I, Section 2, and Article IV, Section 2, which permit slavery, and Amendments Thirteen, Fourteen, Fifteen, Nineteen, Twenty-Four, and Twenty-Six, which grant civil rights and voting rights to the forgotten groups.

Students should research and report on some of the groups who were denied civil rights under the original constitution.

- Students might write about the government's treatment of the Native Americans (land policies, treaties, reservation problems, how and when they were given United States citizenship).
- Students might research individuals who played significant roles in influencing Susan B. Anthony, Rosa Parks, Elizabeth Cady Stanton, and Martin L. King.

EVALUATION

Students can write a 150-word (or more) essay about the reasons that a constitution must include fair treatment for all people. Have them explain what they see their role to be in a democratic society.

TIPS FROM THE TEACHERS

1. Students should discuss the purpose of a constitution and its role in a democratic society.
2. Students should know the meaning of preamble, amendment, ratify, ratification, convention, document, civil rights, and other words that the class might need.
3. When the groups have completed their work, the teacher might discuss the 1787 Constitutional Convention—who was there; what their purpose was; how they accomplished their work; and how they had to ratify the Constitution.

HANDOUT 1

CONSTITUTION FOR THE GEORGE WASHINGTON MIDDLE SCHOOL

PREAMBLE

We, the students of the George Washington Middle School, have decided that in order to make our school a good place to study, to provide for a safe and orderly building, to insure that fair and just rules are made, to be considerate of everyone's needs, and to secure the benefits of a good education for ourselves and for those students who will come after us, we do ordain and establish this constitution.

ARTICLE I

Section 1 All power for rule-making in this school will be in the hands of the School Council.

Section 2 The School Council will consist of two houses: the House of Teachers and the Student Senate.

Section 3 To serve in the House of Teachers, one must be working as a faculty member of this school, own his/her own car and have been a teacher here for at least ten years. There will be five teachers selected by the principal.

Section 4 To serve in the Student Senate, a student must be male, be twelve years old, have blue eyes and blonde hair, have a grade average of "A," and own personal property valued at $500.00 or more.

Section 5 Elections for the School Councils will be held in the spring of each school year with the term of office to begin with the new school year in the fall.

Section 6 A majority vote is needed in both houses for approval in all matters with at least 75% of the members present before a legal vote can be taken.

Section 7 Any member of the Council who is caught in violation of any school rule will be brought before the Council for a hearing. If found guilty, the member will be dismissed from the Council forever.

ARTICLE II

Section 1 Whenever a school rule has been violated, a student has a right to a hearing. This judicial power will belong to the Justice Committee headed by the principal. The Justice Committee will be made up of three teachers and three students from the School Council who have been selected by a majority vote of Council members. The decision of the committee will be final and the appropriate penalty will be applied.

ARTICLE III

Section 1 All proposed school rules written by the School Council will be brought to the faculty and the student body for a vote. Only a majority vote will allow this rule to be put into force.

Section 2 The ability to vote in the school elections will be determined by the following qualifications: Students must be blue-eyed males at least twelve years of age, be of pure British descent, own personal property valued at $300.00 or more, and live within walking distance of the school in a home that belongs to their parents—not a rental property.

ARTICLE IV

Section 1 Whenever an amendment to this constitution appears to be necessary, there must be a majority vote of the School Council with at least 75% of the members present.

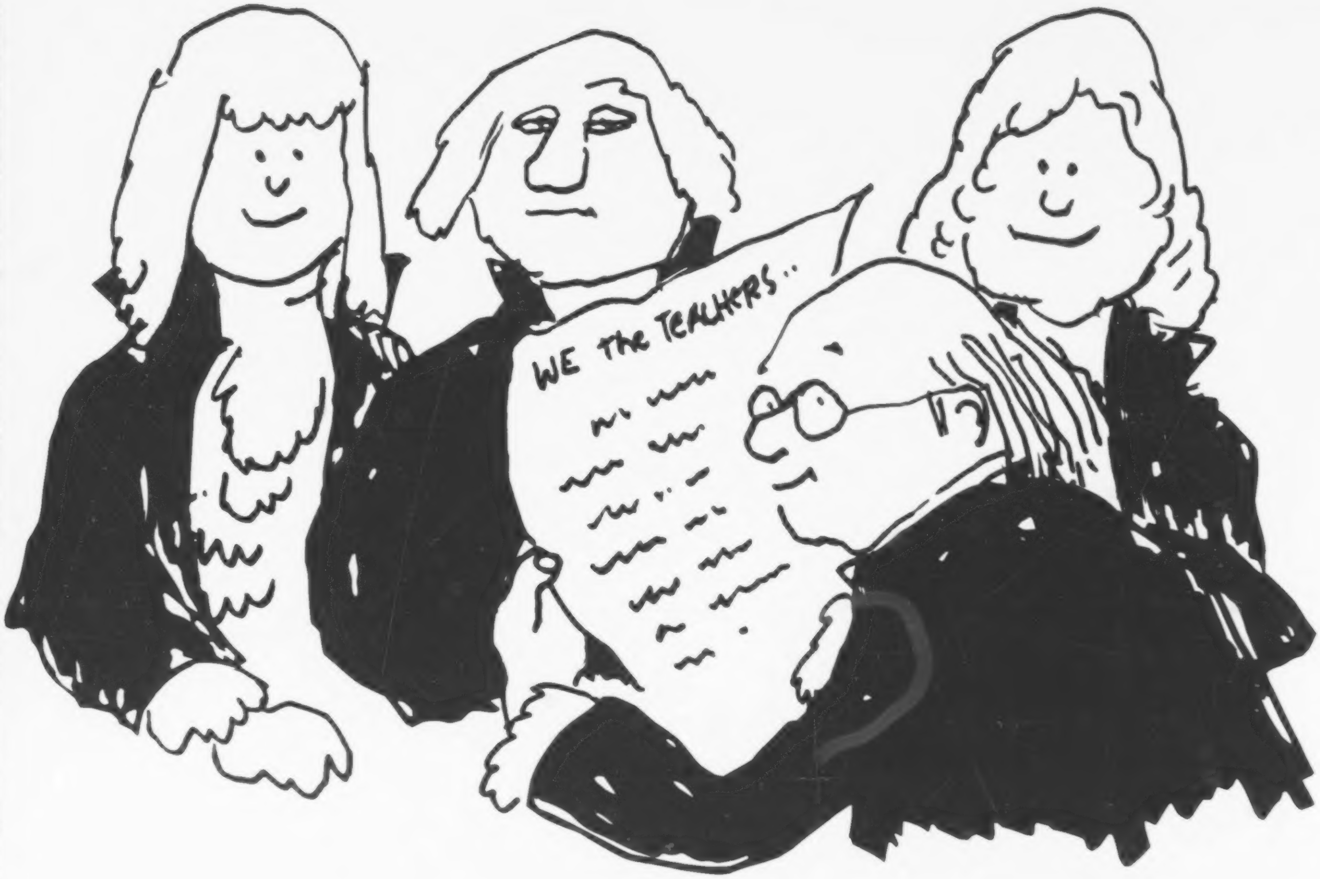
Section 2 Suggestions for amendments may be brought by anyone in the student body who qualifies as a voter. To be brought before the Council, a petition seeking this change must be presented to the Council with 500 signatures or 2/3 of the student body, whichever is larger.

ARTICLE V

To be valid, this constitution must be ratified by 75% of the student body.

CRADLE'S MISSION

To provide caring, sharing and daring Experiences for teachers to enable them to reach their potential as citizen educators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